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THE  
CLASSICS OF INTERNATIONAL LAW

GENERAL EDITOR OF THE SERIES

JAMES BROWN SCOTT

*Member of the Institute of International Law*

*Secretary of the Carnegie Endowment for International Peace*


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De Bello, De Represaliis et De Duello

BY GIOVANNI DA LEGNANO

EDITED BY THOMAS ERSKINE HOLLAND





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## PREFACE OF THE GENERAL EDITOR

THE Carnegie Institution of Washington has undertaken the republication of the leading classics of International Law.

One reason for the undertaking is the difficulty of procuring the texts in convenient form for scientific study; the libraries in the United States have been searched with the result that few of the earlier works were to be found. . Another reason is that some of the works selected for republication have never been translated into English. The American publicist is therefore at a disadvantage in consulting works of admitted authority, and when found they are, as it were, sealed books to all but trained Latinists. The specialist is thus forced to rely upon summary statements and references to them to be found in treatises on International Law, or is driven to examine them in European Libraries, often a difficult task, while the general reader is practically barred from the stores of knowledge locked up in the earlier works on the Law of Nations. The same difficulty exists in Latin America, Japan, and in a lesser degree in many European countries.

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Each work will be accompanied by an English version made expressly for the series by a competent translator.

It is hoped that the series will enable general readers as well as specialists to trace International Law from its faint and unconscious beginnings to its present ample proportions and to forecast with some degree of certainty its future development into that law which Mirabeau tells us will one day rule the world.

The present volume, containing the tractate by Legnano, entitled *De Bello, De Represaliis et De Duello*, written in 1360, is edited by the distinguished publicist Thomas Erskine Holland, from an original manuscript discovered by him at Bologna, dating apparently from the lifetime of the author.

JAMES BROWN SCOTT.

Washington, D. C., February 19, 1917.



TRACTATUS  
De Bello, De Represaliis et De Duello

by  
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## INTRODUCTION

THE work of Legnano, now for the first time printed in its integrity, was the earliest attempt to deal, as a whole, with the group of rights and duties which arise out of a state of War.

No one will be surprised to find that the author, although hailed by his contemporaries as "a second Aristotle," foremost in every branch of learning, was far from sharing in the clear-cut views upon the scope and nature of the "laws of war" to which international jurists, after more than five centuries of subsequent discussion, have at length attained. He includes in his treatise much that would now be regarded as belonging to dogmatic theology, to moral philosophy, or to the code of honour, and relies in support of his statements upon quotations from the Bible, from the *Corpus Iuris Civilis*, the *Corpus Iuris Canonici*, and the Feudal Customaries, which, at the present day, would be treated as irrelevant.

The interest of the book is, indeed, largely due to its remoteness from modern conceptions. It marks the *terminus a quo* from which the literature of the subject had to start, in order to arrive at the *terminus ad quem* which has so far been reached. In the progress of the centuries, and thanks to the labours of a long succession of great writers and statesmen, the Law of War, in common with the rest of International Law, has been disentangled from theology, ethics, the legislation of Justinian, the precepts of the canonists, and feudalism, all of which usefully contributed to its earlier development, and has been placed upon its true foundation, the consent of the states com-



posing the "Family of Nations," as evidenced by consistent courses of conduct, or by generally accepted conventions.\* After these preliminary observations, we may proceed to a detailed account of Legnano's life and writings.

## I

*A Biography of the Author.*

It was probably as early as the thirteenth century that a family deriving its name from the small town of Legnano became resident in the neighbouring great city of Milan, where it continued to be of importance for several centuries.† It was there that, early in the fourteenth century, Giovanni da Legnano (Iohannes de Lignano) first saw the light. His father, Giacomo, bore the title of Conte degli Oldrendi.

The young Giovanni, after studying philosophy and the liberal arts, and paying some attention to medicine, as also to astrology, in which he always continued to take much interest, devoted himself seriously, at Bologna, under the guidance of Paolo Liazari, to what was to be the work of his life; graduating eventually, at an earlier date than has been generally stated, as Doctor of both the Civil and the Canon Laws. There is reason to suppose that the subsequent residence of the "Milanese" Legnano at the University town was not unconnected with the change which took place in the government of Bologna in the year 1350, when the Pepoli family, wearied out by the hostility of the citizens, whom they had oppressed, and of the Pope, whose rights, acknowledged by Taddeo Pepoli ten years previously, they had persistently ignored, were glad, in consideration of a payment of 220,000 gold florins, to part with the "Signoria" to Giovanni Visconti, Archbishop of Milan.‡ In any case, it is in 1350, when Legnano is first authentically heard of, that we find him acting under the authority of the Visconti as member of a commission for the recall of citizens who had been banished from Bologna by the preceding régime, and as entitled, under the same authority, to receive an annual salary of thirty-seven florins, sixteen solidi, for a year's lectures. He

\* On all this, further remarks will be found in part III of this Introduction, p. xxxi.

† See the pedigree at p. xviii *infra*.

‡ Cf. Filippo Bosdari, *Giovanni da Legnano*, Bologna, 1901, p. 1.



is already described as a "Legum Doctor." \* In the following year he is described as "Doctor Utriusque Iuris," and was duly elected by the University to a Readership in Canon Law at a salary of sixty lire. In 1355 he was employed in missions to Venice and elsewhere,† and in 1358 already occupied the post, which he held for many years afterwards, of Advocate for the Franciscan Convent.‡ Though a Lecturer, he does not appear to have been a full Professor till 1360, when he succeeded to the chair of Civil Law vacated by Spinelli, becoming Professor of Canon Law a few years later.

Legnano's first literary effort seems to have been of an astrological character, treating of a conjunction of Jupiter and Saturn.§ It was doubtless, however, at an early date that he began to write those copious commentaries upon the *Decretum*, Decretals and Clementines, of which subsequent canonists speak somewhat slightly.|| But his great reputation rests more largely upon the important part which he played in public affairs, and upon those of his writings which deal, from a scientific point of view, with questions, suggested by the events of his own time, as to the respective rights of the Popes and Emperors; the relations between the civil and ecclesiastical powers generally; the special relations between the two powers in the cities of the Romagna, notably in Bologna; the validity of the election of Pope Urban VI; and the rules which ought to govern the wars by which Italy was, in his days, so constantly devastated.

The story of Legnano's activity, practical and literary, with reference to these questions, falls naturally into three chapters,

\* Ibid., Appendices I and II. In 1352 his salary for lectures on the *Decretum* is fifty librae. In 1353 he is to receive the same sum for lectures on the *Sext*, and, by order of Archbishop Visconti, two hundred florins for lectures on the *Decretum*. Ibid., Appendices III, IV, V.

† Ibid., Appendix VI.

‡ Fantuzzi, V, p. 28.

§ See *infra*, p. xxi, in Part II of this Introduction, treating of the writings of Legnano.

|| e. g. Cardinal Zabarella, in his commentary on the Clementines, after mentioning various previous commentators, goes on to say: "Subinde Io. de Lignano, dominus meus, multos ex praemissis in unum collegit, quos saepe nimium decurtavit. Sed, quod magis improbat a compluribus, non apto retulit ordine, ita ut a paucis eius lectura commendetur. Et huic diligentia defuit non probitas. Fuit enim omnium sui temporis longe princeps." Imola, another pupil, is quoted to the same effect by Oudin and Pancirolus. Cf. Schulte II, p. 257.

covering respectively : (1) the reigns of Popes Innocent VI and Urban V (1352-70) ; (2) the reign of Gregory XI (1370-8) ; (3) the earlier years of the reign of Urban VI (1378-83). By all these Popes he was held in great esteem.

(1)

The misgovernment of Bologna by Giovanni Visconti da Oleggio, on behalf of Archbishop Giovanni Visconti, whose son he was reported to be, had led to negotiations, ending in an arrangement by which Pope Clement VI, in the last year of his life (1352), had agreed that the Visconti should remain in power at Bologna for twelve years. Oleggio had continued to act on their behalf, but in 1356 had declared himself to be independent of them. By the year 1360, however, his position had become intolerable. He was hated by the citizens, and was alarmed to hear that Barnabo Visconti was preparing a large army to expel him from the city. He resolved, as the readiest way of escape from his difficulties, to hand the place over to the ecclesiastical power, and accordingly sent messengers to Cardinal Albornoz, who had already reduced much of the Romagna to obedience to the Pope, and was now marching northwards from Rome, offering, on terms favourable to himself, to surrender Bologna to the Cardinal, as being rightfully church property.

Albornoz, after ascertaining that Innocent VI considered the arrangement made by his predecessor, although it would have still had four years to run, to be no longer in force, accepted Oleggio's offer, and sent his nephew to take possession of the city, into which he made his own state entry on the first of October. On January 20 of the following year the forces of Barnabo Visconti were beaten off in a great battle outside the walls. A subsequent defeat induced Barnabo, in return for certain concessions, to surrender to the Pope the Visconti pretensions over Bologna.

So much it has been necessary to say of the events of 1360 in order to explain the genesis of the work now reproduced, for it was in that year that Legnano composed, or more probably only completed, his book *De Bello*, and presented it to Albornoz, with a very fanciful dedicatory preface, probably after the Cardinal's triumphal entry into the city.\* As so presented, the work seems to have been

\* Or, possibly, while Albornoz was waiting with his army, till he could receive from Avignon a reply to his inquiry as to the continuing force of the agreement of 1352.



entitled *De Civitate Bononiæ et de Bello*. Its composition was suggested, as the author tells us, by the imminence of an attack upon the city by a powerful army, doubtless that of Barnabo Visconti. While submitting what he has written to the better judgement of the learned, Legnano thinks that it may be found a useful exercise for students.\*

In the Preface he touches upon six (?) episodes in the rebellion of Bologna against the Papal power, occurring between the years 1350 and 1360, stating his intention to deal with them in three essays, to be entitled respectively "De Marte," "De Iove," and "De Saturno." He has now composed as the first of these essays, the treatise "De Bello," and hopes hereafter to deal in the second, "De Iove," with the Church and its government, and in the third, "De Saturno," with the Empire, especially in respect of its dominion, ecclesiastical and temporal.†

The esteem in which Legnano was held by Urban V may be gathered from Bulls of 1364, 1369, and 1370,‡ granting lands to him, and ordering additions to his salary. The Pope also made him a present of a handsome set of robes. Not unnaturally, Legnano testified his admiration for Urban in an oration delivered in 1371, which is still extant. It is interesting to find him in 1366 purchasing from the executors of his predecessor, Spinelli, a lecture-room, with the Professor's chair and benches for students, complete.§ Two years later, the dignity of Count Palatine was conferred upon him by the Emperor Charles V.||

(2)

Another chapter of Legnano's life opens, and closes, with the Pontificate of Gregory XI (1370-8), during which he was largely occupied with maintaining a good understanding between Bologna and the Papal See. In 1371 we find him employed in drawing the deeds conveying a Pepoli palace to the Pope for the reception of his newly-founded "Collegium Gregorianum;" and in January, 1376, he was acting as advocate in a suit between a Convent and a Hospital.¶

\* For a detailed account of the work, see Part III of this Introduction.

† These promises were, in substance, fulfilled in works mentioned in Part II of this Introduction, *infra*, at pp. xxii-xxviii, viz. the *De Fletu Ecclesiæ* and the *De Iuribus Ecclesiæ in civitatem Bononiæ*. Cf. Speranza, *Alberico Gentili*, 1910, pp. 31, 37.

‡ See them in Fantuzzi, *Notizie*, V, p. 30.

§ Also houses in the parish of S. Giacomo dei Carbonesi. Fantuzzi, V, p. 29.

|| The Bull is set out in Bosdari, p. 75.

¶ Cf. Bosdari, pp. 37 and 97.

On March 19 of that year, Bologna, exasperated by the conduct of the Legate, Cardinal G. dei Noelletti, and emulous of the resistance of Florence to the ecclesiastical power, proclaimed itself a Republic and adopted, amid scenes of wild enthusiasm, a red flag embroidered with the word *Libertas*, which word figures in the city arms to this day. Gregory retaliated by sending an army to devastate the neighbourhood; whereupon Legnano, together with Girolamo d'Andreae, was despatched to Avignon to explain matters. This he did so effectually that the Pope, convinced that the rebellion had been caused by the misgovernment of his legate, pardoned Bologna, which was, however, not inclined to accept his proffered clemency. It was probably then that Legnano composed his longest work, *De Iuribus ecclesiæ in civitatem Bononiensium*, to show that *in temporalibus*, as well as *in spiritualibus*, the papal authority was supreme over the cities of the Romagna.\* In 1377 he was again sent to negotiate, on behalf of the city, with Gregory, who had now once more adopted Rome as the seat of the government of the Church, and was spending the summer at Anagni. Legnano's efforts were this time crowned with complete success. Under an arrangement to last five years, the city returned to its allegiance to the Pope, to whom it was to pay 10,000 golden florins annually. The Pope, on his side, granted several petitions of the citizens, with one of which, asking for a Vicar "che fosse amatore della città," he complied by appointing to that high office Giovanni da Legnano.† This was on December 13, 1377, and the event was celebrated by processions which lasted three days.‡ So great was the popularity of the new Vicar that, on January 15 of the following year, the Council of 400, by 363 against 6 votes, conferred upon him and his descendants the citizenship of Bologna, and this event was again joyously celebrated.§

\* In this work Gregory is spoken of as *hodiernus*. Much space is devoted to a refutation of the Imperialist views of Dante, as also to the many erroneous meanings given to the word *Libertas*. For a full account of its contents, with copious extracts, see Luigi Rossi, *Dagli Scritti inediti di Giovanni da Legnano*. Bologna, 1898, pp. 20-51. The work contains allusions to the treatise *De Bello*, *ibid.*, p. 25.

† Alidosi, p. 367. The wish of the citizens as to a Vicar is somewhat differently recited in the papal grant, as having been for one "qui sit zelator status ecclesiæ et domini nostri et gratus populo Bononiæ." Bosdari, App., p. 105.

‡ Ghirardacci, *Hist. Bon.*, II, p. 368.

§ The terms of the decree are printed, from the archives, in Ghirardacci, *Ibid.* p. 369.



## (3)

With the death of Gregory XI, on March 27, 1378, and the election of Urban VI, on April 8, begins another, and the last, chapter of the story of Legnano's life. The French Cardinals, who formed a great majority of the sacred College, becoming dissatisfied with their choice, declared the election void, as having been induced by the threatening attitude of the Roman populace, and seceded to Anagni, with a view to a new conclave. A strong letter of remonstrance\* addressed by Legnano, on August 18, to Cardinal Peter de Luna (afterwards anti-pope, as Benedict XIII) failed to prevent the election, on September 30, of the first of a long line of anti-Popes, in the person of Clement VII; thus inaugurating the "Great Western Schism."

Legnano, a consistent supporter of the validity of the former election, was thereupon sent by his fellow-citizens to salute the rightful Pope at Rome, and to ask for three favours from him. These, including the creation of a Bolognese Cardinal, were all granted, and Legnano returned the bearer of two red hats, which, on behalf of Urban, he presented amid scenes of great rejoicing, one to Caraffa, the Archdeacon of the city, and the other to Bishop Mezzavacca, on their promotion to the Cardinalate. The oration made by him is still extant.† It was, perhaps, on the occasion of this first embassy that the Pope declared that he would have retained Legnano at Rome, but that in the absence of so great a man the schools of Bologna would have been left desolate. Urban is said also to have offered to make him a Cardinal, provided that his wife would retire to a convent, which she declined to do.‡ In 1379 Legnano completed a tractate in defence of Urban's election, entitled *De Fletu Ecclesiæ*, which the Pope forwarded to the University of Paris, where it provoked various replies, among them one from the Abbot of St. Vedast's, entitled *De planctu bonorum*, consisting of a dialogue between a doctor of

\* Partially printed by Raynaldus, t. xvii, sub anno 1378, No. 30. It mentions an astrological warning of an approaching schismatical movement, which had been previously sent by the writer to Pope Gregory. Cf. Fantuzzi, V, p. 35.

† See extracts in Oudin, p. 1073, who refers to the Codice Colbertino, t. iii, No. 815.

‡ A. da Budrio, on the "De conversatione coniugatorum," Decret. iii, 32, quoted by Fantuzzi, V, p. 34. Legnano's reply to this offer is set out in Pancirolus, "nolle se sanguinem pauperibus destinatum bibere, sed ex sudore manuum victurum," &c.

Bologna and one of Paris. A second tract, *Pro Urbano*, was said by Legnano's opponents to contain things "valde venenosæ, licet superficiales et non reales." \* In what seems to have been an independent treatise, the *De multiplici genere monarchiæ*, there occurs an interesting reference to the early work *De Bello*. Legnano says that he had in that work treated of war generally, and of its species, without discussing the manner of practically carrying it on, which he now proceeds to do. †

The author of these Treatises, who was, not unnaturally, "molto caro" to the Pope, was, in 1380, again sent on an embassy to him, together with Baldus; and a curious report is preserved of a conversation which took place between these two great jurists, while stopping at an inn in the neighbourhood of St. Peter's, upon the subject of the papal election. ‡ Legnano's services were acknowledged in 1381 by a renewal for one year of his nearly expired appointment as the Pope's Vicar in Bologna. He was once more at Rome as Ambassador on behalf of his fellow citizens in 1382, but died, after a short illness, at his own house, on February 16 of the year following. Whether or no he fell a victim to the plague, which in that year carried off so many of his distinguished colleagues, is not certain.

On February 18 Legnano was honoured by a State funeral, attended—all shops remaining closed—by Cardinal Caraffa, by the city authorities, and by his colleagues in the Professoriate. § He was buried in the Church of St. Domenico, where his fine monument, the work of two celebrated Venetian sculptors, had been erected in his life-time, "in St. Domenico's chapel, above the door on the right," || where it was still standing at the end of the eighteenth century. ¶ It has since sustained great injury, but portions of it may still be seen in the Museo Civico of Bologna. They have been somewhat arbitrarily combined, as will appear from the accompanying photograph.

\* This is textually printed in Raynaldus, t. xvii, App. I.

† "Viso de politia tempore pacis conservanda, restat videndum de politia bellica," &c. Rossi, *Dagli Scritti inediti*, p. 58. An epitome of the whole treatise is given in pp. 51-9 of that work.

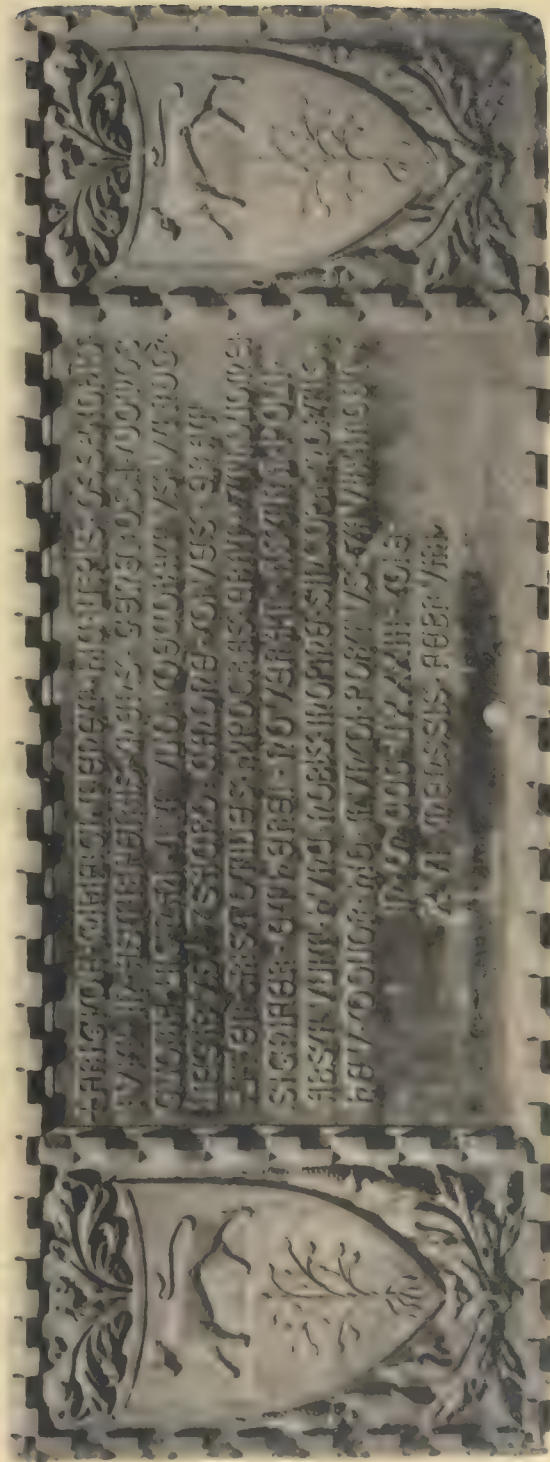
‡ Oudinus, p. 1074. Cf. Savigny, *Geschichte*, VI, p. 273.

§ It is even recorded that the doctors of Civil Law took part in the procession, although it was in honour of a Canonist. Fantuzzi, V, p. 37.

|| Pancirolus, p. 439.

¶ "Anche oggi esiste," wrote Fantuzzi, in 1786, V, p. 37, and Favolini, in 1797. On the monument, cf. Vassari, *Opere* I, p. 444; Bosdari, p. 80; and Cavazza, *Le Scuole dell' antico studio bolognese*, 1896, p. 102.





THE PORTIONS OF LEGNANO'S TOMB NOW PRESERVED IN THE MUSEO CIVICO AT BOLOGNA





There can be no doubt that the group of listening scholars were on the left hand of the monument, balanced by a similar group on the right hand, the faces of both groups being upturned towards a bust of Legnano surmounting the whole. The inscription must have been placed below this central figure. The coat of arms, so often repeated, officially described as "Di rosso spaccato d'argento col leopardo illeonito d'oro ambulante verso il capo, ed un corallo di rosso verso la punta dello scudo," is supposed to have been that of the De Oldrendis. The inscription, as still fully legible to Fantuzzi, ran as follows :

Frigida mirifici tenet hic locus ossa Iohannis.  
 Ivit in astriferas mens generosa domos.  
 Gloria Legnani. Titulo decoratus utroque  
 Legibus et sacro canone dives erat.  
 Alter Aristoteles, Hippocras erat, et Tholomei  
 Signifer, etherii noverat astra poli.  
 Abstulit hunc nobis inopinæ sincopa mortis.  
 Heu dolor. Hic mundi portus et aura iacet.  
 Anno MCCCCLXXXIII Die  
 XVI mensis Februarii.  
 Hoc opus fecerunt Iacobellus et Petrus Paulus fratres.  
 Ioanne Lignano Bononiæ docente.\*

From Legnano's will, made on March 27, 1376, † before starting on his journey to Avignon, and from a long codicil made on February

\* These, not impeccable, Latin verses may be translated as follows : " This place holds the cold bones of wondrous John. His liberal intellect has departed to the starry habitations : all the glory of Legnano. He was enriched with degrees both in the civil and the canon laws. A second Aristotle, a Hippocrates was he, and equipped with Ptolemy's signs, he knew the stars of the sky. We were deprived of him by a stroke of unexpected death. Alas, the sorrow of it. Here lies the harbour and the breeze of the world.

In the year MCCCCLXXXIII the  
 16th day of February.

This work was executed by Iacobello and Pier Paolo brothers, while Giovanni Legnano was teaching at Bologna." The last two lines of the Latin are now almost illegible.

† He had married, before making the will of 1376, Novella, daughter of Federico (son of Giovanni) Andreae, by whom he then already had a daughter Antonia, and a son Battista. Novella survived him, and was one of his executors. Mistakes as to the identity of Novella are numerous, and it is perhaps still not quite clear whether she was the daughter of a son, or of an adopted son of the same name, of Giovanni Andreae.

15, 1383, the day before his death,\* we learn many particulars as to the members of his family, and as to the considerable property left by him in Legnano and Milan, as well as in Bologna. In the case of his son Battista dying without issue, which did not happen, he left funds for a "Collegium studiosorum," with preferences for duly qualified candidates belonging to certain localities and families, which remind us of foundations nearer home. The following pedigree, constructed from various authentic sources, may serve for the identification of members of the family mentioned in this Introduction, or elsewhere :



\* Both will and codicil are textually set out by Bosdari, App., Nos. XXV and XXVI. He is described in the Codicil as formerly of the chapel of S. Proculus, now of the chapel of S. Iacobus de Carbonensibus.



On law-suits which arose between the children of Guglielmo and Giorgio under the Will of Giovanni, see Pancirolus, *De claris legum interpretibus*. The Milan Legnani, publishers of the *De Bello* in 1514, claim relationship with the author. A Captain Alessandro Legnani, in 1587, enlarged the house near the church of S. Giacomo into a palazzo, which passed by the marriage of Teresa Legnani, in 1772,\* to the Campeggi family, from whom it was purchased by the Pizzardi, and was eventually sold to the Railway.† Girolamo, the last of the Legnani family at Bologna, died in 1805. In 1750 Donato Legnani took the name Agucchi, and this branch of the family is still represented through females. Cf. Filippo Bosdari (who is thus descended) in his *Giovanni da Legnano*, 1901, pp. 53, 62; Rossi, *Scrittori Bolognesi*, 1888; Pancirolus, 1593; Alidosi, 1620; Ghirardaccius, 1669; Oudinus, 1722; Argelati, 1745.

The following epitaph (perhaps only suggested) upon Paul Anthony Legnano, by Emilius Romanus, his contemporary, occurring in a codex of the fifteenth century, is cited by Fantuzzi: ‡

Lignani iuvenis Pauli monumenta supersunt  
 Consultum poterant quanta decere senem.  
 Cura frequens studii vitam rapuitque deditque,  
 Hic cineres. Animus summa quietus habet.

Giovanni da Legnano, while enjoying the esteem and confidence of four Popes in succession, was also generally respected and beloved. He was especially dear to the people of Bologna, as "amatore della Repubblica e de' poveri." § Several writers enlarge upon his humility, at the time when, as Papal Vicar, he was practically "Signore di Bologna," in declining to take precedence of the Anziani or Gonfalonieri. "Anzi con grandissima modestia e riverenza sempre si mostrò humile e benigno a tutti in tutte cose, ascoltando le cause altrui con amorevole pazienza, virtù che veramente lo fecero grandemente essere amato." || He was, however, not inclined to put up with any unmerited slight, as appears from an often-repeated story

\* On which see Verses in the *Bibliografia Bolognese*, II, § 10996.

† See Bosdari, who refers to a collection of Legnani papers preserved by the Malvezzi Campeggi family.

‡ IX, p. 140.

§ The vote of citizenship, set out in Bosdari, App. XVI, p. III, recites the important services of Legnano to Bologna.

|| Ghirardacci, *Hist. Bonon.*, II, p. 368. Cf. Alidosi.

to the effect that, with a mind intent upon philosophical problems, he was frequently neglectful of his dress, which led to his being given the lowest place at a certain wedding party. He thereupon sent for a purple gown, which he proceeded to deposit on the seat which ought to have been his, exclaiming "You worship fine clothes, here you have them," and so left the room, while all the company blushed.\*

For the vast reputation of Legnano, as teacher, writer, and man of action, it will suffice to call a few only of the many witnesses who speak of him as having been a universal genius, the glory of his age.

Iohannes Garzon, for instance, writing about 1450, after mentioning some of Legnano's merits, continues: "Hæc me in eam sententiam impellunt ut existimem ætatem illam Iohanne de Lignano nihil vidisse præstantius. Qui astrologiam atque oratoriam cum iuris civilis scientia coniunxisset, nullum me vidisse memini. Addo rerum humanarum peritiam."

"Alter Aristoteles sui temporis vocari promeruit. Andreas Siculus 'maximum et illustrem capitaneum sacrorum canonum, legum, et philosophiæ' vocavit eum," says Freherus, writing in 1558.

Somewhat later in the same century, Pancirolus writes: "Omnes disciplinas tenuisse creditus est, præterea divini humanique iuris scientiam. Philosophiæ naturalis disciplinæ, arti medicinæ etiam, et astronomiæ, antea incubuerat . . . interpretum iuris Pontificii princeps habitus est." †

With Gentili begins a more critical appreciation of our author. In his *De Iure Belli* (1598), l. i, ch. ii, speaking of the civil lawyers who have written upon his subject, he says: "Equidem præter Lignani paucula huius tractatus, et aliorum nonnulla sparsim, legi nihil, et ea non absque fastidio legi omnia. Sic sunt apta minus, minusque splendida: ut præteream illud, esse in eorum libris quamplurimum non de bello, et de belli iure adversus hostem, sed de re militari, et legibus cum cive et milite nostro." And Grotius, *De Iure Belli* (1625), Prolegomena, section 37, speaking of the earlier

\* Pancirolus, p. 438.

† The MS. *Cronaca Bolognetti*, in the Biblioteca Comunale, goes so far as to say: "Era dottore in legge e in tutte le altre scienze del mondo, e si diceva che in quel tempo non si trovava uno pari a lui fra i Cristiani." Bosdari, p. 78:



theologians and jurists (mentioning Lignanus) who have treated of the subject, censures most of them for having mixed up and confused "sine ordine, quæ naturalis sunt iuris, quæ divini, quæ gentium, quæ civilis, quæ ex canonibus veniunt."

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## II

*The Writings of Legnano.*

The importance attached by his contemporaries to any expression of Legnano's views, whether didactic or controversial, is sufficiently attested by the rapid multiplication of all his works in manuscript copies, which can alone account for these having found their way to widely distant European libraries. Printing was, of course, unknown in Legnano's time, but in the following century not a few of his productions were by means of the new art made generally available.

The list of writings which follows is derived from many sources, and is fuller than that supplied by any single authority. Pains have been taken to make it as complete as possible, since it illustrates not only the career and character of Legnano, but also the movement of thought in the Italy of his day. Of only a few of these works can the composition be assigned to particular dates; it has therefore been thought best to group them here according to the subject-matter with which they deal.\*

## I. ASTROLOGICAL.

*Figura delle grande Costellazione, ovvero Congiunzione di Saturno e di Giove nel segno dello Scorpione l'anno dall' Incarnazione di Christo*

\* Fantuzzi, *Scrittori Bolognesi*, t. v, p. 28, follows the order in which the writings occur in the Vatican MS. No. 2639.

MCCCLV, *a di xxii del mese d' ottobre, secondo le considerazione de messer Giovanni da Legnano, sopra quella dando el giudizio suo.* (MS. No. 343 in the Laurentian Library at Florence, according to the Abate L. Ximenes, in his work *Del vecchio e nuovo gnomone Fiorentino*, 1757.)

*De Cometa*, compiled in April, 1368, in which month the Comet appeared. (MS. Vatican 2639.)

Cf. the historical portions of the Preface to the *De Bello*, and much in Legnano's other writings.

## 2. THEOLOGICAL.

*De Christo : De Deo : De Antichristo : De Angelis.* (MS. Vatican.) Contains passages from Ovid and Virgil, and interprets astronomical occurrences as prophetic of the Incarnation.

*Vigilium maiestatis divinæ, compositum per magistrum omnium scientiarum, etc., Io. de Lignano*, beginning "Primo tractaturus de Deo Patre." (MS. at St. Mark's.) \*

## 3. ON CANON LAW.†

*Commentaries and Disputations upon the Decretum, Decretals and Clementines, &c.* Of a Disputation on some Extravagantes of John XXII, it was said "est melius quam unquam fecit de iure Canonico." (MSS. are in the Cathedral Library at Padua, and in the Libraries of the Spanish College and of the Istituto at Bologna.)

## 4. SPECIAL TREATISES ON THE SAME.

*De Interdicto ecclesiastico*, dated 1359, "tempore interdicti generalis et suspensionis studii." (MSS. at the Vatican and at Turin.) Printed, Mediolani, without printer's name or date, together with the *De Censura*, with a note "Scriptus in Generali Concilio Basiliensi, per me Io. Tollenor de Dyedem, A.D. 1436." Also in the *Tractatus Tractatum* of 1549, t. xvi, fol. 245, and in that of 1584, t. xii, fol. 335.

\* See Valentinelli's *Catalogue*, III, p. 42, and Fantuzzi.

† For a special account of Legnano's canonical writings, indicating the libraries in which MSS. of them respectively may be found, and which of them are accessible in print, see Schulte, *Geschichte des Canonischen Rechts*, ii, p. 257.



*Tabula remissoria de Interdictis ecclesiasticis.* Printed in *Tractatus Tractatum* of 1549, t. xvi, fol. 246, and of 1584, t. xiv, fol. 336.

*De Censura ecclesiastica*, dated 1361. (MS. at the Vatican, St. Germain, and Basel.) Printed at Milan (with the *De Interdicto*), also in *Tr. Tr.* 1549, t. xvi, fol. 227, and 1584, t. xiv, fol. 307.

*De Beneficiorum ecclesiasticorum pluralitate*, iussu domini Urbani V (circa 1365). Printed at Louvain by John of Westphalia, 1475 (a copy is at Lambeth); at Paris by Peter de Cæsaribus, M.A. and John Stol, 4to, s.d.; again at Paris in 1512, and at Milan in 1515. Also in *Tr. Tr.* 1549, t. xv, fol. 127, and 1584, t. xv, Pars ii, fol. 558.

*De Horis Canonicis.* Printed in *Tr. Tr.* 1549, t. xv, fol. 411, and 1584, t. xv, Pars ii, fol. 558. (Qu. whether at Rome, by Barthol. Guldinbeck, in 1475?)

*De Celebratione Missæ, Repetitio c. dignum*, De Cele. Miss., Cle. (i. e. Clementinarum lib. III, Tit. xiv, c. 2). Printed at Pavia by Io. Ant. de Biret and Franciscus Ghyrardengus, 1488.

*De Appellationibus.* (MS. at University of Leipsic.)

*De Arbore consanguinitatis.* (MS. in the Vatican.)

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## 5. ON CIVIL LAW.

*De Permutatione.*

*De Emptione et Venditione ad certum tempus.* (MS. at the University of Leipsic.)

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## 6. RELATING TO BOLOGNA.

*De Civitate Bononiæ et De Bello*, 1360.

See p. xii, *supra*, and Part III of this Introduction, *infra*, p. xxvii.

*De Iuribus ecclesiæ in civitatem Bononiæ* (circa 1373). (MSS. in the libraries of the city of Bologna, and of St. Mark's, Venice.) See Valentinelli's *Catalogue*, III, p. 42, and extracts in Rossi, *Scritti inediti*, pp. 25-51. It contains allusions to the *De adventu Christi*, *Somnium*, and notably to the *De Bello*, v. *supra*, p. xiii, n., *infra*, p. xxv.

*Oratio*, on delivery of the Red Hats in 1378. (MS. in Bibliothèque Nationale.) Extracts are printed by Oudinus, p. 371, and Raynaldus, t. xvii.

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## 7. ON WAR, REPRISALS, AND THE DUEL.

It is not unlikely that before producing the work in which these three topics are treated in combination (see Part III, p. xxvii of this Introduction) Legnano had treated of each of them separately. He seems thus to have treated of "War" only, in his *De Civitate Bononiæ et de Bello* (ibid.).

The Biblioteca Comunale of Bologna possesses several MSS. of the *De Duello*, viz. MSS. 894 and 2115 of the seventeenth century, and, in the University Library (?), B. 1483 and B. 1470 (entitled "Iohannes de Lignano et Iacobus de Castillo De Duello"); B. 1483 and B. 1470 of the eighteenth century.

The *De Represaliis* was printed separately at Pavia by Christophorus de Canibus in 1484; and again, in the same place, in 1487, without a printer's name.

The *Tractatus peregrinus de Duello*, Ioh. de Lignano Mediolanensis, "nuper inventus in lucem per magistrum Io. de Lignano, eius agnatum," was printed "ad utilitatem posteriorum," by Ulrichus Sinzenzeler (as appears by his mark, and the letters V.S.) at Milan, s.d. 4to. It was reprinted, "Mediolani, apud Alexandrum Minutianum, impensis Ioh., Iacobi et fratrum de Lignano, A. D. 1508, fol."

For later reprints of the last-mentioned two works, see *infra*, p. xxix.

## 8. ON MORAL AND POLITICAL PHILOSOPHY.

*De Amicitia*, circa 1365. (MSS. at St. Mark's, at Turin, and at St. Peter's Coll., Cambridge.) Printed at Bologna, by Hugo de Rugeriis, in 1492. Also in *Tr. Tr.* of 1549, t. xvii, fol. 2, and of 1584, t. xii, fol. 227.

*De Pace*. (MS. in the Bibliothèque Nationale.)

*De virtutibus generatim*: "Circa circulos virtutum." (MSS., as also of the following treatises, at the Vatican and at St. Mark's.) *De iustitia*; *De vitiis religioni oppositis*; *De pietate*; *De observantia*; *De obedientia*; *De gratia*; *De retributione*; *De ingratitude*; *De fortitudine* (begins: "visio de Iustitia, videndum est de Fortitudine, et licet tractavimus de Bello, tamen adhuc reassumam ibi secundum tractatum de Temperantia"); *De continentia*; *In Aristotelis Politicorum lib. i, ii, iii.*\*

\* See Valentinelli's *Catalogue*, III, p. 42, and Rossi, *Scritt. inediti*, pp. 51-63.



*De Multiplici genere Monarchiæ.* (In the Venice MS.) Contains a reference to the *De Bello*. It discusses the *Politics* of Aristotle, and has something on naval warfare.\*

*Circulum Œconomiæ.* (In the Venice MS.) †

*Circulum Politicorum.* (In the Venice MS.) A commentary on Books I and II of Aristotle's *Politics*. †

#### 9. ON THE GREAT WESTERN SCHISM.

*Epistola ad Cardinalem de Luna*, August 18th, 1378. (MSS. at the Vatican and in the Bibliothèque Nationale.) Partly printed by Raynaldus, t. xvii, Nos. 30–35.

*De Fletu ecclesiæ* (*Tractatus pro Urbano*), written in 1379. (MSS. at the Vatican and at St. Mark's.) Partly printed by Raynaldus, u.s., No. 38.

*Pro Urbano tractatus secundus.* (MS. in the Bibliothèque Nationale.) Printed by Raynaldus, t. xvii, Appendix.

10. Among the writings of Legnano preserved in a MS., No. 2639, of the Vatican Library, is a treatise with no title, commencing : ‡  
 “Audite somnium per quod vidi solem et stellas, Genes. xxxvii.”  
 Citations from Levit. xix and Deuteron. xix immediately follow. The body of the work consists of a long dialogue between a *clericus* and a *miles* upon the respective prerogatives of the Pope and the Emperor. It is dedicated to the Pope, and ends : “somniatum MCCCLXXIII, nocte vi Feb., scriptum die x Martii.” §

This treatise has remained in manuscript. Not so a distorted version of it, which, since it is dedicated not to the Pope, as an argument in favour of Papal claims, but, at fulsome length, to King Charles V of France (1364–80), in support of lay governments, must have been put together, perhaps secretly, by its unknown writer, very shortly after the date of the original upon which it is

\* See Valentinelli and Rossi, *ibid*.

† *Ibid*.

‡ From fol. 226.

§ So Fantuzzi, t. v, p. 43. This *Somnium* is a quite different work from the *Vigilium*, attributed to Legnano in Valentinelli's Catalogue of the Library of St. Mark's, t. iii, p. 42. See *supra*, p. xxii.

modelled.\* It found its way into print, in both Latin and French, rather more than a century later, as the *Somnium Viridarii*, or *Le Songe du Vergier*.

In Latin we find : *Somnium. Aureus de utraque potestate libellus, temporali et spirituali, Somnium Viridarii nuncupatus*, formam tenens dialogi, in quo miles et clericus de ambarum iurisdictionum disputabant potestate. Cui Repertorium annectitur ab Ægidio Daurigny recollectum. Op. et diligentia Iacobi Pouchin, sumptibus vero et expensis Galioti Dupre, Parisiis, 4to, 1516.† This edition is reprinted as "ab auctore incerto," in the *Tractatus Tractatum* of 1549.‡

A slightly different text is printed by Goldast in his *Monarchia Romani Imperii* (1612).§ It is entitled *Philothei Achillini, consiliarii Regis, Somnium Viridarii, de iurisdictione regia et sacerdotali*. It commences : "Audite somnium quod vidi," Genes. xxxvii, &c., is dedicated to Charles V of France, and ends : "Liber Somnii Viridarii, cuius utilitas fuscus usque celebratur ad Indos, hic finem capit optatum."

There is no doubt that the attribution of the work to Filoteo Achillini (born in 1466 and died 1538), author of the poem *Il Viridario*, and founder of an Academy similarly entitled at Bologna,|| is a mere piece of mystification.

*In French :*

The earliest edition, entitled *Le Songe du Vergier*, "lequel parle de la disputation du clerc et du chevalier," is adorned with pictures, one of which represents a King (Charles V), on either side of whose throne are Queens, symbolical of the spiritual and temporal powers, another, a professor lecturing. It ends : "imprime par Jaques Maillet l'an mil. cccc quatre vintz et onze, le 20 jour de mars."

This edition is reprinted in the *Traitez des Droits de l'Eglise Gallicane*, MDCCXXXI.¶

Somewhat later appeared another edition of the *Songe du Vergier*, except in size identical with the former, and with the same illustrations, "imprime

\* A MS. of it is said to exist in a catalogue, ending in 1468, of S. Sulpice in Bourges. See *Traitez*, as mentioned below.

† The Royal Privilege speaks of it as "nouvellement imprime." It was placed in the Index (ordered at the Council of 1544) where *viridarius* is mistakenly supposed to be the name of the writer.

‡ T. xiv, fol. 200-60, in double cols.

§ T. i, fol. 58-229. Goldast's Preface contains a discussion on the always disputed question of the authorship of the *Somnium*, and gives a long list of writers by whom it has been cited.

|| For this information as to the real Achillini, I am indebted to Professor A. Sorbelli, of Bologna.

¶ T. ii. Prefixed to this treatise is a Dissertation upon its authorship : "C'est un enigme," says the writer, "fort au-dessus de ma portée . . . je n'ai point chez moi le Sphinx, comme le disoit Cicéron." But he disbelieves in its attribution to Philippe de Maisières, and others. Like most of those who have dealt with the question, he seems never to have heard of Legnano.



a Paris par Le petit laurens, pour venerable homme Jehan petit, libraire, demeurant a Paris, en la rue St. Jacques, a l'enseigne du lyon d'argent," 4to, (1500). On the half-title is the device of Jehan Petit, a tree, supported by two monkeys.\*



## III.

*The work now reproduced.*

It was, as we have already seen, † in the year 1360, while Bologna was threatened with attack by the army of Barnabo Visconti, that Giovanni da Legnano composed, or more probably only completed, the treatise upon War, which he afterwards presented, with a dedicatory Preface, to Cardinal Albornoz, entitling it *De Civitate Bononiæ et de Bello*. Whether, in this its original form, the treatise dealt with Reprisals and the Duel, as well as with War, is uncertain. There can, however, be little doubt that the author's essays upon all three topics were at some time or other combined by himself into one work, thenceforth known as his *Tractatus De Bello, De Represaliis et De Duello*. ‡

Of this work manuscripts are to be found in the following libraries: §

At *Bologna*, in the Biblioteca Comunale dell' Archiginnasio. MS.

B. 1393 is of the fourteenth century, approximately of

\* Some copies of this edition bear "Jehan Alisot, libraire, demeurant a Angier."

† *Supra*, p. xii.

‡ For the separate histories of the Essays *De Represaliis* and *De Duello*, see *supra*, p. xxiv.

§ For much of what follows, as to manuscripts and editions, I am indebted to the kindness with which my enquiries have been answered by Librarians of the Bibliothèque Nationale at Paris, of the Biblioteca Apostolica Vaticana, of the Ambrosiana at Milan, of the R. Biblioteca Nazionale at Turin, but most of all to the Librarian of the Biblioteca Comunale dell' Archiginnasio di Bologna, Professor Albano Sorbelli, and to his learned colleague Professor Giuseppe Brini, who have been most helpful in many other ways to the present publication.

the year 1390. A reproduction of this MS. occupies pp. 1-65 of the present volume. Also an eighteenth-century copy of the table of contents of the Vatican MS. 2639.

At *Rome*, in the Vatican Library. MS. Reg. Suec. 1873, Lat. No. 369 (2639), of the fifteenth century, contains, it seems, all three treatises, but omits much of the *Proæmium*.

At *Turin*, in the Biblioteca Nazionale, there is a MS., G. I. 17, of the fifteenth century, lacking the *Proæmium*. It is mutilated, breaking off near the end of *Represaliæ*.

At *Paris*, in the Bibliothèque Nationale, is a MS., No. 12467 (from the Bibliotheca Colbertina), probably of the earlier fifteenth century.

At *St. Germain*; so Montfaucon, p. 1127 *d*.

At *Bâle*; so Fabricius, and Montfaucon, p. 613 *b*.

A translation into Italian by Paulus Antonius de Lignano, mentioned by Argelati (ii, Part I, p. 168), doubtless remained in MS., and seems to have disappeared.

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About the year 1477, the above-named Paulus Antonius de Lignano, great-grandson of the author,\* prepared for the press this work of his ancestor. In so doing he took great liberties with the text, suppressing most of the prefatory matter, which may, not unnaturally, have struck him as somewhat fanciful, omitting also some sections and paragraphs of the main treatise, while interpolating throughout explanatory remarks of his own, which might well have been dispensed with. Of the text, as thus manipulated, editions, copies of all of which are extremely rare, were printed as follows :

At *Bologna*, per Henricum de Colonia, ad instantiam Sigismundi de libris, MCCCCLXXVII, 6 Kal. Ian. It occupies, in double columns, 75 pages of a folio volume which has no general title, containing eighteen legal treatises, all dated between the years 1477 and 1493, the first of which is headed : "Clarissimi iurisconsulti D. Lanfranchi de Orianò solennis utilis quotidianus et practicabilis tractatus de Arbitris. Additis multis aliis questionibus clarissimorum doctorum." Legnano's work is reproduced at the end of the present volume from the

\* See the pedigree of the family, *supra*, p. xviii. It would seem that a MS. of his additions exists in the Bibliothèque Nationale.



All Souls copy of this very rare collection, as is explained *infra*, pp. xxxvii and 375.

At *Pavia*, per Franciscum de Ghirardengis, MCCCCLXXXIV, die XXVIII maii, fol.

Again at *Pavia*, per Christophorum de Canibus, MCCCCLXXXVII, die ult. maii, fol. There is a copy at Turin, commencing: "*Tractatus elegans De Bello, De Represaliis et De Duello: clarissimi interpretis domini Iohannis de Lignano Bononiensis, in celeberrimo Bononiensi Gymnasio actu legentis, cum additionibus domini Pauli de Lignano, eius pronepotis.*"

At *Milan*, per Ioh. Angelum Sinzenzeler, impensis Iohannis Iacobi et fratrum de Lignano, cum additionibus domini Pauli de Lignano (*s. d. circa 1500*).

Again at *Milan*, apud fratres de Lignano, MDXV, cum tractatu Paridis de Puteo de eadem materia.

Also at *Turin*, MDXXV, 4to.

The *De Bello*, with the *De Represaliis*, but without the dedicatory Preface, and without any of the matter added by Paul Antony Legnano, is printed (as "nunc primum in lucem editus"! ) in vol. xvi, from fol. 371, of the *Tractatus Tractatum* of 1584, which had also printed the *De Duello*, with the additions, separately in vol. xii, from fol. 281. This last-mentioned tract had already appeared in vol. xii, from fol. 281, of the edition of 1549 of the *Tractatus*. On the earlier separate editions of the two last-named treatises, see *supra*, p. xxiv.

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### *The Contents of the work.*

The *Proœmium* contains a good deal of curious matter, most of which is omitted even in those printed editions which contain some of it. It begins with an elaborate and over-fanciful dedication to Cardinal Albornoz, whose exchange of his peaceful duties at the Papal Court for the command of armies is likened to the action of Ahab, King of Israel, who "changed his raiment and went into the war." Bologna, the seat of knowledge of all kinds, especially of law, and capital of the states of the Holy Church, is likened to Jerusalem, the throne of the Lord. Like Jerusalem, Bologna had been severely punished for her sins, but looks for deliverance to the

Cardinal, to whom the treatise, concerning Bologna and the War in which he is engaged, is offered by the writer.

Legnano then sketches the history of Bologna between the years 1350 and 1360, under six heads,\* of which the first relates to the cession of the city by Giovanni Pepoli to Giovanni Visconti, Archbishop and Lord of Milan. The second deals with the rule of the viper brood,† of the Archbishop, i. e. of his three nephews, Matteo, Galeazzo, and Barnabo, and of their representative, Giovanni Visconti de Oleggio. The third deals with Oleggio's assertion of his independence. The fourth describes the misfortunes which hence resulted, and the fifth the recovery of Bologna by Albornož to the see of Rome. The sixth, if such there be, seems to consist of visionary peeps into the future of the city. Throughout this sketch the Archbishop is described as "Filius Saturni," his nephews as "the three vipers," the Pope as "Iupiter," Albornož as "Frater Iovis." Oleggio as "Mercurius," Bologna as "Taurus," an army as "Mars." Full information is given as to the position of the heavenly bodies at the date of each event,‡ and, as has been already explained,§ the author indicates, with reference to each of the three periods into which he divides his subject, the book by which he proposes to illustrate it. Of these, only the *De Bello* had, as yet, been written.

After this long exordium we come to the treatise *De Bello* itself (pp. 1 and 67, *infra*). It consists of three "Principal Treatises," the first and second of which are quite short, dealing respectively with the definition of "War," and with the classification of its species. The third "Principal Treatise" occupies the rest of the work, dealing at length, in its six sections, with the several species of war, viz. :

I. *Heavenly Spiritual War*, arising from the rebellion of Satan (chaps. iii-vi).

II. *Human Spiritual War*, i. e. the conflict between morality and self-interest (chaps. vii-viii).

III. *Universal Corporeal War*, i. e. war in the usual sense of the term, considered under six heads (chaps. ix-lxxvii), treating respectively of : (1) the justifiability of war (chaps. x, xi) ; (2) those by,

\* The Bolognese MS. says six, the Vatican MS. five.

† The viper occurs in the Visconti arms.

‡ Dr. Rambaut, the Radcliffe Observer at Oxford, has been good enough to look at the positions so attributed to the sun, moon and planets in the zodiacal signs, and pronounces them to be practically correct.

§ *Supra*, p. xiii.



and against, whom war may be waged (chaps. xii-xvi); (3) the elements of warfare (chaps. xvii-xxx), with excursions upon the cohort, legion, &c., upon the mutual duties of troops and commanders, and, at tedious length, upon courage and the list of virtues generally; (4) the rights and duties of troops who are obliged to serve, or who do so voluntarily, from various motives, and in particular as to the service of stipendiaries, whose position is discussed at inordinate length (chaps. xxxi-lviii); (5) plunder, prisoners, stratagems, and other incidents of warfare (chaps. lix-lxxv); (6) the seven kinds of wars (chaps. lxxvi-lxxvii), without mention that these kinds had been already so distinguished in the previous century by St. Thomas Aquinas in the *Sec. Secundæ*, Quæstio 40, and by Henry of Segusia (Hostiensis) in lib. i. rubr. 3 of his *Aurea summa*.

IV. *Corporeal Private War*, in self-defence (chaps. lxxvii-cxxi).

V. *Corporeal Private War*, in defence of the State (the "mystical body"), i. e. *Reprisals* (chaps. cxxii-clxvii).

VI. *Corporeal Private War*, for clearing one's character, i. e. the *Duel* (chaps. clxviii-clxxiv).

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### *Estimate of the work.*

It must be abundantly clear, from the preceding analysis of the work, that what would now be considered to be questions of International Law occupy but a small place in it. Putting aside Tracts I and II, upon "Spiritual War, Celestial and Human," as also Tracts IV, V, and VI, devoted to the several species of "Private Corporeal War," viz. "Self-defence," "Reprisals," and the "Duel," we may concentrate our attention upon Tract III, the longest of all, which deals with War properly so called, described by Legnano as "Universal Corporeal War."

Even here, the author is primarily a canonist, astrologer, theologian, and moralist; constantly preoccupied with the claims of the Papacy and the exceptional position of the clergy. In support of his arguments he quotes occasionally from Greek and Roman writers, but his pages are throughout crowded, one may perhaps also venture to say disfigured, by a superfluity of references to the civil and canon laws, while his style, here as elsewhere, is not unfrequently open to the criticism of Rabelais upon that of the Glossators, as "latin de

cuisinier et marmiteux, non de jurisconsulte." At the same time, the work throws much light upon fourteenth-century views and practices, as, for instance, the employment of German mercenaries, the treatment of Jews and Saracens, the rivalry between Popes and Emperors, the recognition of clergy and laity as forming "two peoples"; and, intermingled with all this, we do find much that is recognizable as appertaining, in a rudimentary way, to an International Law of War. We are thus justified in looking upon Legnano's book as being the first in which an attempt is made to deal with that subject as a whole. He discusses the lawful causes of War, the authority by which it may be declared, the distinction between war and reprisals, the distribution of booty, the employment of stratagems, the treatment of prisoners, of non-combatants, of enemy troops who have surrendered and, in particular, of enemy commanders. It will be noticed that he has here nothing to say as to hostilities carried on at sea, a topic which he, however, appears to have handled subsequently.\*

His quotations from Roman classics are scanty, but he shows a wide acquaintance with the, already translated, writings of Aristotle, to whom he always refers merely as "the Philosopher." His citations of the Fathers are for the most part derived from the *Corpus Iuris Canonici*, which indeed, with the jurists who comment upon it, is his chief source of inspiration.† He is, of course, also familiar with the *Corpus Iuris Civilis*, with the *Feudal Constitutions*, and with the *Lex Lombarda*.

It is a pleasure, as well as a duty, to express my gratitude for assistance received, in the performance of what has been a by no means easy task, from my friends Professors Brini, Da Costa and Sorbelli of Bologna, especially from the last named, in his capacity of head of the library of the University and City. I am also

\* In the *De multiplici genere monarchiæ*, see Rossi, *Dagli Scritti inediti*, p. 59.

† He relies constantly, as might be expected, upon Causa XXIII, *De re militari et de bello*, and Causa XXXIII, Quæstio iii, *De pœnitentia*, of the second Part of the *Decretum*; upon the Title, *De Treuga et Pace*, in the Decretals, lib. V, tit. 34; and upon the titles inscribed *De Homicidio*, in the Decretals, lib. V, tit. 12, in the *Sext*, lib. V, tit. 4, and in the Clementines, lib. V, tit. 4: also upon a long list of canonists, and upon the *Secunda Secundæ*, Quæstio 40, of St. Thomas Aquinas. See the Index of Authorities, *infra*, p. 457.



indebted to the authorities of many other public libraries, for information courteously supplied in response to my enquiries ; and to Dr. Rambaut, for kindly ascertaining the general correctness of the astronomical statements occurring on pp. 73-78 of the extended text. I have been fortunate, for a second time, in securing the valuable services, as translator, of my friend Mr. Brierly, and, not least, in having been permitted by the Carnegie Institution to entrust the production of a work abounding in technicalities to the artistic accuracy of the Oxford University Press.

T. E. HOLLAND.

May 11, 1917.

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# TRACTATVS DE BELLO

d. Io. de Lignano de Mediolano Iuris Vtriusque Doct.

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Collotyped by the Oxford University Press from a photograph of  
the thirteenth-century manuscript, B. 1393, preserved in the  
Biblioteca comunale dell' Archiginnasio di Bologna

(See the Editor's Prefatory Note which follows)





## PREFATORY NOTE

THE original intention of the Carnegie Institution was to adopt for its edition of the *De Bello* the text of the Treatise as first published. Having ascertained that the first edition of the work appeared at Bologna in 1477, the editor procured its reproduction from a very rare volume, lent for the purpose by All Souls College to the Oxford University Press.

His further enquiries, however, addressed to many European libraries, resulted in the receipt of information, courteously supplied by Professor Brini of Bologna, in March, 1912, as to a manuscript of the Treatise, believed, on good evidence, to have been written in the lifetime of the author. It was thereupon decided to make this manuscript the foundation of the present edition, and to relegate the very imperfect and much altered version of it, printed in 1477, to the end of the volume, to which it may be regarded as a sort of Appendix, commencing at p. 375 *infra*.

In a letter to the editor of February 13, 1913, Professor A. Sorbelli, the accomplished librarian of the Biblioteca Comunale dell' Archiginnasio di Bologna, wrote as follows :

‘ Il nostro interessantissimo manoscritto è indubbiamente il più antico e il più autorevole dell’ opera del Legnano. Da un esame accurato che ho fatto, e dal giudizio di parecchi competenti, si può fissar la data del manoscritto nostro (B. 1393) al finire del secolo XIV, e cioè intorno al 1390. A circa questo anno corrispondono la “littera”, o scrittura, che è Bolognese, e perciò assai nota qui ; la filigrana della

carta che, come può, confrontando il Briquet, stabilirsi, è appunto a un di presso di quell' anno o di due a tre anni addietro; ed il confronto con altri manoscritti datati.'

He goes on to confirm the early date assigned to the manuscript by an inscription placed upon it by a notary of Bologna, Rolandus de Castellanis, who was living in 1420, to the effect that he had bought it from Io. Bitini de Brissia, executor of Luca Cantarelli.

The pages which follow were collotyped by the Oxford University Press from a photograph of the manuscript taken at Bologna in 1912.

For the text, as 'extended' and otherwise revised by the editor, with his explanatory note prefixed, see *infra*, pp. 67-205. For Mr. Brierly's English Translation of the same, see *infra*, pp. 207-374.

T. E. H.















tractus de ecc. celsura.  
2. j. fo. 20A.

1. maguș cinu ne născu  
apăndu cu trăsni

no. m. de dno. a. m. n. n.  
nos adq. i. a. collegium  
adq. i. n. n.

For an answer:

*S. hibernica*, Linn.



motus

ordinati ut tunc in quiete tibi mect. Et motus tamen in motu et regulari in  
teriore tibi sine motu est principii tibi quiescere est moueri nunc imitando gentilem  
carone qui repudiatum uasipit regrediendo unde diueriores inquietis etiam diuerse  
officibus s. adhuc est ut moueretur donec altissimo placuit stabilem tibi figure modum  
Ingressus est plene iouis. iohannis dñi. q. x. die pmo aphs. tuc sol cu quiete. g.  
xviii. q. xxiii. Luna abibat. g. xi. q. xx. Draco cu capite sagittabat. g. xviii. q. xviii.  
Saturnus rugiebat cu leone. g. xxv. q. viii. Inpu cu thamo. g. xx. q. xviii. mares  
pistabat. g. vi. q. xxiii. Venue marem pistando pibat. g. x. q. li. mercurius man  
eto. g. xv. q. x. Hinc inquam gesta paces cu fca fuit. Et faciam tractatu singul  
lore de pace. Thaur infirmarie no plectore s. chachome. et uere cathome q.  
humor difformitas et excessus inquali diu pectusum est in quanto s. feruor i qual  
sporas modum plures sunt. Et tibi medelam afferant.

Tractatus de pace.

Inapit tractatus de bello. nota.

**I**n tractatu belli sic procedam. pmo ponā descriptionem belli humani de quo pnapalit  
tractaturus sum in gñe. Sed diuidam bellum p membra. Tercio psequar singula  
membra. Bellum sic describit. Bellum est intentio exorta p aliquid diffoni app  
etiam humano ppositum ad dissonantiā excludendam tendens. Vix intentio. hoc ponit  
ut genus. nam sub se gñet et bellum gñentem. et alias quascumq. ut l. fusi. q. f.  
p. de aq. pñ. ar. Vix p diffoni. et est cu unde oritur quolibz intentio. Vix appetitū huano  
ad differentia breuor ad dissonantiā. et ē. et est cu finale cuiuslibet belli. nam quodlibet bellum  
tendit finalit ad tollendam dissonantiā que fuit belli introductoria. et sic fuit bella p  
pacem. xxiii. q. i. not. De diuisione belli et qualitate diuidat. v.

Quid sit bellum et  
qualiter describatur. R.

**S**ecundo bellum sic diuidit. bellum aliud spiritale aliud celeste. Spiritale aliud celeste  
aliud humanū. spiritale celeste est de quo haur. Job. xiii. c. humanū est de quo scribi  
ad romanos vi. c. ibi inde aliam legem repugnantem legi mentis mee. xxiii. q. d.  
spiritus. Corporeale aliud est diuisale. aliud pnapalare. de diuisale haur. p. de cap. et  
post. ut. q. p totū. xxiii. q. i. et q. ii. pnapalare aliud fit ob tutelam corpis sui. et rezo.  
et de ho. f. ur. p. de iust. et iur. l. i. i. ut. p. ad l. ad quibz l. f. ad l. q. qui cum alio. et l. i.  
c. in m. et c. olim de resti. spo. et in elem. p. furio sue. de homicidio. aliud fit ob tutela  
corpis mista. ut eius pñe. p defectu iurisdictionis quod represalie nūcipatur. de quo  
in aut ut no fiant pigno. et de iuris. c. l. l. aliud fit p gñitaciā resistens  
iurisdictioni iudicis. de quo in l. qui restituere p. de rei. uen. Aliud p purgationem  
quod duellum appellatur. de quo c. de gladiatoz. l. pñ. et de pugnantibz in duello pñi  
civili. Verū est q. posset diuidi pma diuisione p iustum et iniustum. s. in hys modis iusta  
pendum. et singula membra singulariter sunt explanda. ex ordine suo. Et po de  
bello spiritali celesti. breuissime illud explicando. et sic de singulis. Ordo tractatum. p.

p. de b. et di.  
de h. et b. et  
di. et.

Tractatus igit de bello spiritali celesti.

Sed de spiritali humano.

Tercio de corporali diuisale.

Quarto de pnapalari quod fit ob tutelam corpis sui.

Quinto de pnapalari quod fit ad defensam mista corpore. quod represalie nūcipat.

Sexto de pnapalari quod fit ad purgationem quod duellum nūcipatur.

De spiritali bello celesti. p.

Greg.

adno.

**R**edundo ad singula dico q. celeste bellū inferit p ingratitudinem ingentem  
p defectu pñis caritatis. impresso a creatore. in intelligenciā mī ceteras  
sublimiore creati. et huc no gñit de capto pñis dñi. Vbi sciendum est q. ut  
maius gregorius in morabilibz. ab initio creatōis angellicis nāt. nature. altissimus  
omniū creatōz. creauit hūaferū ceteris angellicis intelligencijs eminentiore. nam ipius  
pñis nō fuerit inferioris. imparat p. de i. ut scribi ezech. xxxi. alietes planta  
mūd equarlit similitudine nec frondibz eius. nā ip. speciosus fuit in multis adēpse  
q. frondibus. dicitur. q. plantam ceteris regionibz tunc illū spūs pulcritudinis equatū reddit

Lucifer.



...centum milia et alia sapienter tractatur apud, quod est ille regulariter et laudabiliter cum

no 10. H. de am  
tarys. n. d. d.  
m. d. h. d. n.  
p. n. d. d. d.  
d. d. d.

¶ Quinte  
lapis 7  
lotophoc  
sic dicitur  
R.







¶ iudicio iusti belli est actus punitivus malorum et rebellium q<sup>d</sup> adeo positus invenit







[illegible]



ut omnis unicus inde vegetat. Insuper g. adfirmat nā. in hīs inferioribus mediantē celesti  
et speculo corpore. illud aut totum corpus operatur mediantē motu et lumine ut inquit d.  
ph. Et quia in ipsa tota machina celesti sunt ptes diversarū virtutū influendo ut ptes  
specul. varietas. bellas certitudinem et possit diversitas animi p. diversitatem varietatem  
naturarū et motū dependet effectus omne genti et corruptibile idcirco quilibet o-  
rietis et nā. varietas. Diversitas repugnancia hic inferius in genere dependens est a sup  
ex quo statim inferet q. cū repugnancia et difformitas sunt indicatoria bellorū q. bella mē  
orientur. Imo experientia docet q. p. uniformitate. aspectū tpe. naturarū et difformi-  
tatem. in singulis mē. hōies nāles dilectōes et nāles immitate. hō. quilibet experit

+ nā. quis diligit statim cū videt nullis meritis precedentib. et sic hō. hō. hō. nullis  
demeritis precedentib. sic mē. amicos et villas et castra. in p. dilectōes et odia nālit  
p. uniformitate. aspectū tpe. g. t. r. e. o. r. i. s. e. a. p. et sic in p. odia et bella. influentia

et difformi-  
tatem.

celesti sic et amicitia et p. r. e. s. sic mē. p. i. a. s. = Hic aut celesti nā. mediantē motu  
est p. d. i. c. t. a. g. n. a. t. i. o. n. i. s. et corruptōis in hīs inferioribus augmenta et diminutio nedum in  
singulis. supra pmo. in singulis mundi plagis nam ex hac supra nā. plage fici-  
biles p. s. i. n. t. i. n. h. a. b. i. t. a. b. i. l. e. s. et cō. nam uis d. i. c. t. i. n. a. p. h. i. ubi mare fiet aridum ubi  
aridum fiet mare. ex hac nā. repugnancia ac dispositio ex qua r. i. s. s. e. o. t. t. e. n. t. o. e. s. b. e. l. l. a  
p. a. c. i. l. l. a. r. i. a. et diversitas in p. o. n. t. h. o. c. p. m. o. t. u. et aspectū varietatem quedam exaltat  
quedam exinguit et quedam admittit. mutat mē. r. e. g. i. m. i. n. a. d. i. v. e. r. s. a. l. i. a. et p. t. i. c. u. l. a. r. i. a. et  
h. a. m. o. s. t. r. a. r. i. p. o. t. n. a. m. p. o. s. s. i. t. cū sufficienti p. d. u. c. t. i. v. a. a. l. i. c. u. i. e. f. f. e. c. t. u. n. e. c. e. s. t. i. l. l. u. m. e. f. f. e. c. t. u.  
p. d. u. c. t. i. v. a. n. i. s. i. a. d. f. i. t. a. l. i. q. u. o. d. e. p. o. s. t. m. e. a. m. a. p. e. d. i. m. e. n. t. u. p. d. u. c. t. i. o. n. i. s. f. i. nā. celestis g. m. u. e. d. i. f. f. o. r. m. a. l. i. m. o. t. u. et aspectū. i. p. s. i. m. p. t. e. s. i. n. t. d. i. f. f. o. r. m. o. s. e. x. f. i. n. nā. i. n. f. l. u. e. n. d. o. e. r. g. o. n. e. c. e. s. s. e. e. s. t.  
p. d. u. c. t. i. v. a. h. o. s. e. f. f. e. c. t. u. s. r. e. p. u. g. n. a. n. t. i. o. s. et difformes am. nō. f. i. t. q. u. o. d. i. m. p. e. d. i. r. e. p. o. s. s. i. t. et h. a. c. i. n. f. e. r. i.  
p. o. s. s. e. t. q. nā. l. i. t. e. r. n. e. c. e. s. s. e. e. s. t. e. s. b. e. l. l. a. n. e. c. a. l. i. t. p. r. e. d. e. r. e. t. m. u. n. d. i. g. u. b. n. a. t. i. o. p. r. o. t. e. c. t. o. r. i. n. g. nā. l. i. t. e. r.

nā. l. i. t. e. r.

+ q. h. a. celestis nā. operatur in hac inferioribus. non in p. s. e. et d. i. c. t. o. i. n. t. e. l. l. e. c. t. o. h. u. m. a. n. o  
p. m. o. d. u. r. a. t. l. i. b. e. r. t. a. s. a. r. b. i. t. r. i. u. r. i. t. i. n. c. n. a. b. u. c. h. i. d. n. o. s. o. r. x. x. i. i. i. q. i. i. i. i. e. t. c. d. e. t. i. u. s. e. t.  
d. e. p. e. d. i. n. c. f. a. i. r. e. n. i. et p. h. o. i. n. e. t. h. i. c. o. s. p. o. p. a. n. i. r. i. n. o. r. g. a. n. o. i. n. v. i. t. u. i. s. s. e. n. s. i. t. u. a. r. u. q. u. e.  
r. e. c. e. p. t. a. i. n. f. l. u. e. n. t. i. a. a. d. m. i. n. i. s. t. r. a. n. t. i. n. t. e. l. l. e. c. t. a. m. s. i. c. p. m. d. i. r. e. c. t. u. i. n. f. l. u. e. n. t. h. i. n. c. e. s. t. q. u. o. d. s. e. n. s. i. t.  
i. n. l. i. c. e. n. t. i. u. e. r. b. o. r. u. nā. s. a. p. i. e. n. s. d. i. a. t. u. r. g. i. s. t. i. s. e. q. u. i. a. h. o. c. t. r. a. c. t. a. r. e. n. i. m. i. s. e. l. l. o. g. a. t. i. v. e.  
a. t. t. e. r. m. i. n. o. i. u. r. i. o. n. o. u. l. t. i. m. o. a. u. r. a. h. a. n. c. d. u. c. t. o. e. m. i. n. s. a. p. o. f. i. s. s. i. c. i. a. t. i. l. l. a. n. i. e. x. p. d. e. a. s.  
et d. e. m. o. s. t. r. a. n. t. b. e. l. l. a. p. u. e. n. i. s. s. e. a. d. e. o. p. o. s. t. u. s. e. t. e. f. f. e. c. t. u. s. l. a. e. x. h. o. c. u. l. t. i. o. i. n. f. e. r. a. t. u. r. nō. i. m. m. e. d. i. a. t. e. s. s.

mediantē machina celesti naturalē opando. = Dicit q. bella cognita sunt uis. h. e. t. u. i.  
hic in q. s. i. d. e. r. o. q. l. e. z. d. i. c. i. t. u. r. i. u. r. a. q. b. e. l. l. a. s. i. n. t. i. n. t. r. o. d. u. c. t. a. u. i. s. g. e. n. a. u. u. t. p. s. i. d. e. r. i. d. i. q. u. o. s. g. e. n.  
et h. e. r. m. a. s. u. i. r. q. a. m. l. e. x. h. a. u. i. s. s. e. d. i. n. s. t. i. t. u. i. t. i. n. c. e. r. d. o. q. b. e. l. l. a. o. r. t. u. i. n. e. r. i. t. nō. s. o. l. u.  
e. x. e. q. u. i. t. a. t. e. nā. l. i. s. h. u. m. a. n. e. i. n. t. e. l. l. i. g. e. n. t. a. c. c. e. r. t. e. p. m. o. p. m. o. d. i. a. l. i. t. e. x. d. i. s. p. o. s. i. t. i. o. n. e. nā. nā. t. u. r.

Quales uis genai ortu  
huit bellus vniuersale co-  
pale. x.

+ r. a. n. i. o. n. o. s. o. l. u. i. n. f. l. u. e. n. t. i. s. s. i. m. a. c. t. u. s. h. u. m. a. n. o. s. p. m. o. s. u. p. i. n. q. u. i. b. u. s. a. m. q. a. i. a. s. e. t. e. a. i. n. a.  
m. i. n. a. t. u. t. s. i. t. u. e. r. i. t. d. e. o. q. b. e. l. l. a. h. a. n. t. o. r. t. u. a. u. i. s. nā. l. i. e. t. i. a. u. t. d. i. s. t. i. n. g. u. n. t. a. u. i. s. g. e. n. a. u.  
q. u. o. d. q. u. a. l. i. t. e. s. s. i. c. p. b. a. t. e. x. p. m. l. i. g. u. o. g. e. n. s. s. e. t. e. t. i. u. o. nā. l. e. e. t. l. e. x. h. a. u. i. s. s. e. d. i. n. s. t. i. t. u. i. t. i. n. c. e. r. d. o. q. b. e. l. l. a. o. r. t. u. i. n. e. r. i. t. nō. s. o. l. u.  
e. x. e. q. u. i. t. a. t. e. nā. l. i. s. h. u. m. a. n. e. i. n. t. e. l. l. i. g. e. n. t. a. c. c. e. r. t. e. p. m. o. p. m. o. d. i. a. l. i. t. e. x. d. i. s. p. o. s. i. t. i. o. n. e. nā. nā. t. u. r.

+ r. a. n. i. o. n. o. s. o. l. u. i. n. f. l. u. e. n. t. i. s. s. i. m. a. c. t. u. s. h. u. m. a. n. o. s. p. m. o. s. u. p. i. n. q. u. i. b. u. s. a. m. q. a. i. a. s. e. t. e. a. i. n. a.  
m. i. n. a. t. u. t. s. i. t. u. e. r. i. t. d. e. o. q. b. e. l. l. a. h. a. n. t. o. r. t. u. a. u. i. s. nā. l. i. e. t. i. a. u. t. d. i. s. t. i. n. g. u. n. t. a. u. i. s. g. e. n. a. u.  
q. u. o. d. q. u. a. l. i. t. e. s. s. i. c. p. b. a. t. e. x. p. m. l. i. g. u. o. g. e. n. s. s. e. t. e. t. i. u. o. nā. l. e. e. t. l. e. x. h. a. u. i. s. s. e. d. i. n. s. t. i. t. u. i. t. i. n. c. e. r. d. o. q. b. e. l. l. a. o. r. t. u. i. n. e. r. i. t. nō. s. o. l. u.  
e. x. e. q. u. i. t. a. t. e. nā. l. i. s. h. u. m. a. n. e. i. n. t. e. l. l. i. g. e. n. t. a. c. c. e. r. t. e. p. m. o. p. m. o. d. i. a. l. i. t. e. x. d. i. s. p. o. s. i. t. i. o. n. e. nā. nā. t. u. r.

policea

et p. ipam ut sine cia. p.  
globum humanum



Distance

na me aule et  
me canonicum

f. <sup>1. Re</sup> ~~prima~~ <sup>pe.</sup>



... ..  
... ..  
... ..

1000000

Verst.

• 1.90:

Bocha.

2. 90.

Rocka.







quidus directio. In metallu aut ul opus metalli no depucantur. si deaputanc? no eti p mu-  
 lte si p hoste reputatur. ff. de re. mili. l. iij. c. i. et p. a. l. p. d. is qui. et. l. p. d. iores. Capite  
 aut puniuntur. qui pposito manus intulerint. qui inobedientes sunt. Qui spectantibus  
 ceteris per fugam arripuerit. Exploratores qui secreta nunciat hostib. Calligatus q metu  
 hostiu infirmitatem simulauit. Qui comilitone gladio uulnerauit. Qui sine cu se uul-  
 nerauit. ul morte sibi qsaui. scias si dte tredo ul dforis impatencia. na tales infima  
 notant. p dnu aut ul lasauia lapsis. malitia mutame. Qui no descendit pposito sui  
 cu ponit capite puniuntur. ei qui no ponit paratur. hoc hntur. ff. de re. mili. l. ome de  
 hcam. et. l. iij. g. f. Item qui explorator obitauit hostibus insistentib. aut qui de fossato  
 ent recedit capite puniuntur. eam si re bñ gesserit. ff. de re. mili. l. iij. Item si paitu-  
 atocem seditionem. de pte tpe belli capite puniuntur. tpe paco. equus gradu repellit. paco  
 milita munt. ff. de re. mili. l. no omes. non omes in de ptores puniendi sunt equalit. p  
 fci d. eo gradus. ordino supendior et aliaz archistannap. qui excessit ppaui comentus.  
 ut emisor. ul de pte. reputatur. hntur in eo diez quib. tardius. ul acius redyt. ul si  
 impedimento allquo detentus. ff. de re. mili. l. iij. g. f. et. l. qui comenauit. et. l. no omes hntur  
 ora to an arte mte. Emisor est quidm vagans a castris. ad ipa redyt. de pte. q p pphu  
 pto uagatus. ad castra reduciuntur. ut. l. iij. g. emisor. ff. e. n. de pte. si in urbe ueniantur.  
 capite puniuntur. alibi si p pma de pte capitis iterato de pte capite puniuntur. ff. e. n. l. no  
 omes. de pte de pte bona qfiantur. e. de re. mili. l. iij. **De fortitudine. et ipi**  
 na et que fortitudo dicuntur. morales. et que no et que fortitudo. bellum ducit ad finem rectu  
 et que non. B.

Capite puniuntur.

Item miles uictor paco capite puniuntur. ff. de re. mili. l. iij.

Emisor. Desitor.

De fortitudine.

Et quia dicitur fortitudo sit virtus moralis. et appet q no. nam fortitudo est  
 dispositio corporalis. ut. l. i. c. de atletis. l. iij. ff. de hys qui. no. msi. l. atletis. ff. ad. l. d. q.  
 l. qua accit. g. si quis in uoluntate. de pu. in uoluntate. p totu. e. de gladiatores. l. vna. de torneat.  
 p totu. ergo no est virtus moralis. cum dispositio corporalis. differat ab hui seu dispositio  
 hic et ipa sit inferior gradu. de pe. et. re. c. infirmitas. xij. q. i. p. pimus. xxij. q. iij.  
 si hnt. c. de sa. san. cele. l. sanamus. g. sic. ois virtus moralis. est pectatur in passionib.  
 et opationib. ut. pbat pto. 2. c. ethic. p. fortitudo e pectatur in medio. ut idem. pto. 3.  
 ethic. p. de reo sic. quod no est una virtus no est uirtus pmo virtutes q pluralis latius  
 ad minus duos nro est qnta. ff. de testi. l. ubi nus. can. iij. q. iij. ubi nus et uenula pluralis  
 de reg. iur. l. i. d. et qfirmat p dm pph. po clenchou. na eadem est diffinitio ppositio et uni  
 ppositio. si fortitudo no est una virtus. pbat hoc minor. na una uirtus opponit duob. diuis  
 ex pte. ut. l. i. d. sepe. de qfuctud. c. pte. et fortitudin. opponitur. quatuor extrema. f.  
 inamidius et timiditas. timor et audacia. et defectus in audendo qui est morialis. ut pbat  
 ter. 3. c. eth. ppositum pbat pto. 3. c. eth. Pro pluit qois e aduerendum. q fortitudo simitui  
 equinat p fortitudin. que idem est quid robur corpus. et fortitudin. que est uirtus moralis  
 pma e pntia qua quis pot mouere. ut pbat pto. p rectoris. et utraq. requirit in bello et  
 sic supra sint gnalis cu dixi q fortitudo seu virtus et arma fundant bellum cu utraq. requirit  
 si de pma que. e robur corpus no e dubiu q no est uirtus moralis p supra allegata. et de pa  
 pcedit q. et illa est virtus fm qua nos bñ hntus aca timore et audacia in bellicis pntis  
 Et de ista psequamur. q pntis est plana impis et consorib. Pro intellectu aut fortitudo  
 hic est attendendum q in audendo et timendo qtingit excedere et deficere. et utrobiz male  
 agere. qtingit et male se hnt et sic diuise. differt in audacia et timore. nam audacia e  
 passio appetitus. irascibilis. fm que inclinamur. ad agendum terribilia. ad aggrediendum  
 timor. inclinatur ad fugiendum ut quilib. expat in se ipso. si utraq. qtingit bñ agere. male  
 nam si quis uideret. x. armatos et solus aggrediret eos male ageret et sino figeret male  
 ageret et sic male aca aggressura et male aca timore. Sic eia in timendo quis excedere  
 pot. de eae si sit certu hnt in castro. et no uideant nisi certu si fugiant male agunt  
 sic eia no aggrediendo. ut si uiderent spolari auctu. sino aggrediant male agunt. Sic  
 inde excessum in no timendo. cu expedit in timendo cu no expedit. in aggrediendo cu no  
 expedit et no aggrediendo cu expedit. et sic hnt una extrema. audacia et timore. et utro  
 biq. gradum ut oup. **Volueris est notandum** pntis est repere excessum extremos ui-  
 cosum et inuipabilem. ubi est repere medium bonu et laudabile. q si totu det malu et in-  
 uipabile no posset diu q defectus est inuipabile na defectus diceret defectus mali et sic o  
 no foret malum expedit ignare. q in medio sit bonu cui respectu uniu dant malu excedendo  
 aliud deficiendo. Et hnt infirmitates. due qclusiones. p soluit qois. pa q fortitudo hic e  
 virtus moralis. pa q est una uirtus. pbat pma. nam omis habuit electum medij laudabile.

duo gradus



2<sup>o</sup>. (Long a different.)

ſiè appellat vier' moed.

1<sup>re</sup> 1<sup>re</sup> a en forme.

১৪.  $\sqrt{2}$  a cu final.

Спаси нас господи яко  
иже возлюбил.

Richa.

செய்யுறியுமிரு.

1. <sup>29</sup> { *Lacus a maiori.*

187.  $\left( \text{Loc}^2 \text{ ab etimologia. } \gamma. \text{ i. fo. } \right.$   
123.

*P. R. de auto.*

[illegible]



habere dicitur simpliciter bonus, et sine ipso non. sic enim dicitur Cardinales in iudicio meo. nomen simpliciter  
Nam ipsi sunt mundi cunctos super quibus tota mundi gubernatio regitur, et reguntur et ad ipsos spectat  
subsistentia totius pondus mobilis gubernationis et motus ipsius prout pater sonatur. Quibus pater noster  
quanta est celsitudo nostra et sufficiunt stabiles sunt, et immobiles firmant ordinem motus non deuant  
alio rationis humani generis. Monasteria gubernatio quatuor cardinalibus sunt quanta, sufficiunt similes  
in multis. Unde Varietas, Unde infirmitas, Unde tanta, acutus distinctio, acutus cum non est novum  
ardorem, in libertate autem posset fingere modum. Et quia cardinalatus dicitur in tractatu de ecclesiastica  
censura tunc pater, et video, ut distinctio principalis proprii. Et quia ut dicitur non habet ad plenum ex  
plicatur, nam virtutem moralium cardinalium aliquantulum et succurrunt per fortitudinem explicandam  
de ea in membris. **Quid sit virtus.** Sciendum est quod ut dicit philosophus. Virtus est habitus effectus

Cardinalis virtus dicitur sic.

Scitatur de ecclesiastica censura.

Rica.

Rica.

**De triplici specie boni.** Et qualiter virtutes cardinales ab uno efficiuntur. R. Bonum utile,  
bonum delectabile, et bonum honestum. Et ista bona sunt per effectum appetibilia, et fugibilia et  
omnes virtutes morales circa ista tota versantur.

**Explicemus unumquodque.** Et primo bonum utile,  
circa quod versatur virtus alacris de tribus modis. Aut expendendo, aut accipiendo, aut consummando.

Aut ab experientia.

pater acutus effectus non expiuntur homo in se ipso et ista deductio ab experientia est ualida, inquit  
ut placuit in philosophia per inquit. inquit de mona. circa si. col. i. ff. de et. in. si choros. s. h. p. uel  
de de. ut. enu. l. y. s. que oia. de elec. q. sit. l. y. Expendendo, hoc tangit dupliciter. Aut

enim expendit sua, aut aliena, expendit sua, tunc circa ista expendendo versatur. Virtus libe-

ralitatis et magnificentie, et circa ista optinuit. s. auaritia et prodigalitas parauitencia et humanitas  
Et autem non sunt sua, tunc per distributem illis quod sunt. et sic est iusticia. ut ff. de iur. et iur.

l. iusticia. et in ista. s. iusticia. x. q. y. c. i. d. uoluntaria. Aut distribuit illis quod non sunt  
et tunc est iusticia, ut uelut scilicet alacris, ad hoc quod est ualidum. ar. ut. l. i. s. huius re. ff. de.

Car. in agro sensu.

offi. et. ou. man. e. ut. l. p. p. s. in ignorantem ff. man. et. e. c. apostolica de hys q. si. ap.

et. e. c. uix de quiesca. qui. In non reddendo hys quod sunt homo dicitur simpliciter malus, cum  
q. h. sicut. de iur. om. in. ff. de iusticia. l. sequitur. s. c. aut. Pater quoniam iusticia est cardinalis quia

non habendo ipsam circa distributem eorum que sua non sunt. homo est simpliciter malus, et liberalitatis,  
et magnificentie, que quasi sunt circa distributem eorum que sua sunt non sunt cardinales. q. q. t.

male distribuendo sua, non est simpliciter malus sed si diceret fatuus, et sic habet una cardinalis  
s. iusticia, circa expenditum, uelut boni. Si autem virtus moralis uersatur, circa bonum utile in

accipiendo, hoc tangit dupliciter. Nam aut accipit que sua sunt aut uelut debita. Aut alii  
ena. et non debita, et sua uelut sibi debita, et a quibus non debet peccat si liberalitatis et magnifi-

centia non in est simpliciter malus, et aut accipiat aliena, talis est simpliciter malus, hinc  
est quod in talibus sunt uisus remedia, ut in iudicio v. v. l. v. ut ff. et. x. illos. n. fuba.

et. q. d. ex legibus. et. canonicis que in singulis casibus explicantur per variationem casuum. actuum  
Et sic per explicationem huius sit actus, s. accipiendo, circa bonum utile, appetit quoniam iusticia optinet card-

inalitatem non autem liberalitatis sive magnificentie, et per optinuit iusticie dicitur simpliciter malus  
non autem per optinuit liberalitatis uel magnificentie, Si autem uersatur virtus moralis in reddendo

bonum utile, hoc tangit dupliciter. Aut reddit et consummat sua, aut reddit aliena primo,  
aut reddendo que sua sunt et nulli dando, peccat si liberalitatis et magnificentie nec talis

est simpliciter malus, Et si in istis oduces uideat pauperem indigentem et ad mortem et nichil  
det peccat mortaliter. Unde per quod tunc reddit non proprium sed tunc. et tunc talis necessarius sit

fienda et. v. p. d. clemens. d. i. v. l. x. q. i. dilectissimis et Augustinus ut transsumit. viij.  
de quo uel et. Si autem quis reddit aliena simpliciter est malus et iustus appellatur, si iusto

non reddat, et remedia iuris, sunt per dicitur de quibus. Et. Circa igitur bonum utile etiam una  
solum virtus, cardinalis, in distribuendo, et accipiendo, et consummando, et per proprium optinuit

homo est simpliciter malus, Cardinalis est iusticia non cardinales, sunt liberalitatis et magnifi-

centia et hoc clarum. **Dicendum** per quod erat per bonum delectabile, circa quod uersatur virtus  
moralis, et circa hoc uersatur, dupliciter, Aut largiendo, aut accipiendo. Et largiendo sic

amici, affabiles, et curuosi, Iste autem uirtutes non sunt cardinales, quia non sunt de  
necessitate humane nature, quia multi sunt magni et uirtutes qui in talibus nesciunt se habere in

Si autem suscipiendo et hoc dupliciter. Aut enim uersatur principaliter circa delectabile, tunc dicitur  
simpliciter malus, et appellatur incontinentia, et dico se male habere excedendo, Nam insensibilis  
qui non delectatur, non est simpliciter malus precedens, et sic habet rempantia que optinet car-

Boni delecta  
bile.



Si autem ueretur simpliciter circa tristitiam et hoc dupliciter. nam est quoddam tristibile quod aptum est mouere ad iram. et tunc ueretur manifestando hoc non est cardinalis quia non est necessarium quod transiret ad actum exterioris tunc diceretur inuisibilis. Si autem est tristibile quod aptum est mouere ad amorem tunc est fortitudo. nam sicut ille est simpliciter malus qui non uult sustinere terram bello pro bono iuramento et sic fortitudo est uirtus cardinalis et hoc de bono delectabili. Si etiam ulterius quod erat ratio boni s. boni operis. Et tunc est triplex. quoddam patet ad uirtute cognoscendam et hoc sunt uirtutes intellectuales et hoc sunt scientia sapientia intellectus ars et prudentia. Quoddam patet ad uirtute imperatricem. ut ueritas et fides. Quoddam patet ad uirtute appetituum. Capiamus s. membris s. patiens ad uirtute interpretandam. Et dico quod ista ueritas spectans ad uirtute interpretandam non est uirtus cardinalis quia non reddit hominem simpliciter bonum nec eius uirtus simpliciter malum. Uirtus enim magis opposita est iactantia et uacillatio est triplex. est enim iactantia simplex et ista est gratia delectationis. Altera gratia honoris altera gratia lucis. Pola pa iactantia operum per directam ueritatem. Alie autem ingrediuntur aliam speciem uirtutis nam prius solum patet quod est mendax. s. mendacium est duplex. nam est mendacium quod est simpliciter falsa significatio ueritatis et de illo dixi quod directam operum ueritatem. Aliud est falsa significatio ueritatis cum intentione fallendi. et illud facit simpliciter hominem malum. et in adit in speciem iusticie et hoc est alia species mendaciorum persequitur Augustinus in libro de mendacio. transmissum habetur. xxij. q. ij. c. primo capitale. Aliud est ut dixi boni honestum patiens ad uirtute appetituum. Et hoc dupliciter. aut centraliter. et tunc sunt uirtutes morales de quibus super nichil est. aut significatiue et tunc sunt laus bona terrena. et circa istud bonum honestum est magnanimitas et philomunia et istas non sunt uirtutes cardinales nam etiam multi sunt uirtuosi qui non appetunt honores quibus sunt digni. Si autem loquamur de bono honesto quod spectat ad uirtute cognoscendam. tunc sunt uirtutes intellectuales ut scientia intellectus ars et prudentia. prime tres non sunt cardinales quia non sunt de necessitate uirtutis humane. Et prudentia est de necessitate boni. vmo impossibile est alii aliquid esse uirtuosum sine prudentia. nam prudentia regit illas ceteras uirtutes. Ex his infer qualiter fortitudo per quam fit primo est uirtus cardinalis. Et apper qualiter sunt quatuor. scilicet ex triplici bono appetibili. et figurabili et triplici uirtute tunc necesse est. iusticia. Temperantia. fortitudo et prudentia. que ne dum cardinalis vmo in aliis ceteras operantur ipsam et principium. Et Quomodo et qualiter que possit dici fortis in bello. P. Consequenter queritur in aliquo possit dici fortis etiam sine sint creatus circa pericula mortis in bello. Apper quod sic non fortitudo est necessaria denotat humane cum sit cardinalis ut est per quod que bonitas humana habet per se ex parte bellico ergo. consequenter probat per locum agendum ut ff de nec. ge. l. atqui na. in di. denique in di. nunc de supfluitate primo in per notia d. pro quod. Item talis dicitur quod fortitudo est quodammodo periculosus suscipio et labor per se. Ita autem potest et sine bellico actu. ergo probatur consequenter per locum a consequenter destructo quod est ualidum ut in per. ff. si cer. pe. l. ij. c. de per. l. apud antiquos v. qm. ff. de in in. re. no. ut. Oppositum dicitur per. c. et hinc. Et per hoc quod dicitur in sacramento militis. cum agitur. s. non curare mori. ut. l. p. ff. ex qu. ca. ma. et l. v. c. de hys qui imple. l. h. ij. Pro per quod est attendendum quod fortitudo sumitur generaliter per firmitate ad et hoc est generaliter ad omnes uirtutes nam cum in istas uirtutes et uirtute recipiat. xxij. q. d. horrendus de uir. uir. quendammodum. ff. de adult. l. si uisus. ff. de deat. l. p. ff. de ne. ge. l. per regula. per semel et regula mutare. de re. iur. l. b. et hoc modo non foret dubium quin talis possit fortis esse sine periculo bellico sumit etiam forte per ut uirtute specialis que est inclinans ad aggere diendum et expectandum pericula per fugiendum malum culpam. Unde triplex est malum. nesciam quod oppositum tunc quod oppositum delectabili. Culpe. quod oppositum honesto. bonum autem autem quod est honestum est preferendum bono utili et delectabili. sicut autem cor rationalis preferenda est corpori. xij. q. i. perim. xxij. q. ij. si hoc. Et de fa. san. cele. l. sanus de pen. et re. cum infirmitas. Et hoc inferitur quod tres sunt uirtutes morales necesse ad hoc ut quis dicatur bonus et uirtuosus. Una que prefigit animam ad preferendum bonum honestum utili et hoc est iusticia. Insuper et per iusticia. xij. q. ij. cum deuotissima. Alia firmans animam ad preferendum bonum honestum delectabili. et hoc est temperantia. ut. l. v. de si pensandum pal. et de q. si. q. p. p. p. Alia firmans animam ad sustinendum passionibus magis quam incurrendum malum culpam. et hoc est fortitudo. ut. c. de adult. l. vna. l. p. c. de hys qui imple. l. h. c. l. v. q. i. s. hinc etiam. et hoc est fortitudo de qua est primo. Et merito hoc dicuntur cardinales quas sunt de necessitate bonitatis humane et qualiter istas a se de se ipsum et qualiter alia. Tolle exemplum. mulier temptata de adulterio per promissionem se descendit per temptantia ff. de ri. nup. l. palam. q. temptatur per terrorem ista est fortitudo xxij. q. v. lucciam et c. fieri. et c. finge. xxij. q. i. non sunt etiam temptat per munera

Bonū habitus.

Iactantia triplex.

Sunt aliquale diffinitio si sim  
subiectus quod non repugnat  
iusticie nec alit explicare nā  
fortitudinis de qua est principalis  
primo.

T. cha.

Car agnitas.

Car agnitas.

triplex malum.

P. 30.



ab ista se defendit p[ro] iusticia. xij. q. ij. cu[m] deuotissimam. p[ro]p[ter] eam exemplum de fortitudine n[on] si  
 p[ro] timore se defendit dubitat ab ista se defendit p[ro] fortitudine. ut in can. luccia et a. finge.  
 xxxij. q. v. Si temptatur p[ro] delectabilia tunc defendit temperantia xxxij. q. v. no[n] p[ro]t. et a. nec  
 solo. et a. qui uidetur et a. no[n] meretur. Sicut munera tunc defendit iusticia. q[ui]a iusticia est  
 uendere bonu[m] honestu[m] namq[ue] sp[irit]uale. i. q. v. qua[m] p[ro] de somonia. p[ro] totu[m]. Si falsis roib[us] tunc de  
 fendit prudentia et sic vna cardinalis firmat aliu[m]. ut p[ro]ferat bonu[m] honestu[m] utili. ut iusticia  
 alia ut p[ro]ferat delectabili. ut temperantia. alia ad subueniendum tristia p[ro] bonu[m] tuendum  
 et malu[m] culpe excludendum ut fortitudo. prudentia aut[em] ceteras regulat. sic d[icitu]r in  
 cardinalib[us]. **V**oluerunt est est sciendum q[uod] bellum sumit duplicat. Vno mo[do] p[ro] actu bellandi  
 hinc mo[do] ut sumit p[ro] de rap. et post h[oc] reuer[entia] l. in bello. et l. post l[ic]entia. s. de gladi. l. una. l. iij.  
 alio mo[do] sumit p[ro] qualib[et] expectatio[n]e corporalis p[er]iculi ead[em] si no[n] sit actualis tuasp[er]io et hoc si p[er]  
 aliu[m] e[ss]et au[tem] posset uerisimilit[er] resista. al[iter] no[n] e[ss]et bellum. ut in latrone suspendendo et alio  
 iusticiando. Si bellum capatur p[ro] actuali tuasp[er]ione hinc mo[do] p[er]a forando no[n] est solim[us] ar[bit]ra  
 illa p[er]icula. q[ui]a tunc no[n] e[ss]et cardinalis cu[m] multi sint diuersi qui no[n] sunt in talib[us] expectant.  
 Si aut[em] sumatur p[ro] mo[do] tunc forando uersatur circa illa p[er]icula qualib[et] sicut diamus in  
 muliere que sub i[n]ter p[er]icula p[ro] autem capta[n]do. ibi no[n] est bellum p[ro]mo mo[do] sup[er]i. si p[ro] sic  
 et in est forando. notandum in q[uod] forando no[n] est circa quolib[et] p[er]icula. bellica namq[ue] si quis  
 tuadat aliu[m] et defendat se no[n] est forando. quia tunc tunc e[ss]et forando fortitudine si q[ui] sub  
 stinet p[er]icula bellica. p[ro] uenire malu[m] culpe tunc est forando. Unde dicit p[er]o q[uod] no[n] est forando  
 p[ro] necessitate hinc ead[em] can. xxxij. q. iij. nabucodonosor. et a. de tyrie de p[er]o d[icitu]r sic  
 enim. tunc q[ui] clidatur solo q[uod] p[ro]fic[er]e cum q[uod] in forando sit ar[bit]ra p[er]icula mortis. et bellica  
 et dicitur q[uod] no[n] ut exemplum est in muliere. Secundo mo[do] q[uod] extremus actus fortitudinis  
 sit circa mortis p[er]icula dicitur q[uod] sic. quia dicitur est ar[bit]ra difficile. Tercio mo[do] q[uod] inclinet  
 ad subueniendum mortis p[er]iculu[m] si quis accit[ur] et dicitur q[uod] sic q[uod] virtus exspectatur  
 circa ultima p[er]icula. p[er]o. celi. et mundi. **Q**uod sit p[ro]p[ri]alior actus fortitudinis i[n] bello. p[er]o.  
 l. i. et q[uod] quid sit p[ro]p[ri]alior fortitudinis bellum. an expectatio hostiu[m] an aggressus  
 tractatu[m] de liberalitate. victiosus est dicit q[uod] accipit. reape. scribit ead[em] c[on]tra. i. m. p. e. non  
 sit i[n] manus tua p[ro]p[ri]a ad accipiendum et ad dandum collecta. hinc e[ss]et q[uod] sal[tem] scribitur.  
 beatus est dicit q[uod] accipit. xij. q. i. p[ro]dicat. et de celi. m[er]it[us] cu[m] marthe de d[icitu]r. c. i. p[ro]p[ri]o.  
 a similit[ud]ine victiosus est agredi et expectare. quia agrediens dat. expectans recipit. p[ro]p[ri]a  
 victiosus est b[on]i facere. q[uod] b[on]i reape. ut idem p[er]o. probat nam si melius est fa[ci]re c[on]tra q[uod]  
 p[ro]p[ri]a in q[uod] uirtuti ergo bene facere melius q[uod] b[on]i pati. q[ui] sequitur tenet p[ro] locu[m] honoris p[ro]d  
 dicit ualidum ar[bit]ra in p[ro]p[ri]a. ff. de ne. ge. l. at qui n[on] i[n] d[icitu]r. v. d[icitu]r. q[uod] de sup[er]fluitate ex. aggr  
 diens b[on]i dat. expectans b[on]i recipit ergo victiosus aggr[ess]i. p[ro]p[ri]a melius e[ss]et b[on]i opari q[uod]  
 no[n] opari turpe. p[ro]p[ri]a illud. no[n] sufficit aliter amalo nisi q[uod] bonu[m] est faciamus. n[on] a. illud.  
 p[ro]p[ri]a opari bonu[m] e[ss]et melio[ri]e dicit sine cu[m] in actib[us] no[n] p[ro]p[ri]a p[ro]p[ri]a. et ab illo fiat d[icitu]r. q[ui] sequitur  
 tenet p[ro] locu[m] asine. qui est ualidus in uice. ut ff. de ritu. nup. l. si quis p[ro]p[ri]a de u[er]o p[ro]p[ri]a. no[n] intelligit  
 s[ed] si quis palam. ff. de c[on]tra. p[ro]p[ri]a l. reaptu[m] ff. de au[tem] 7 ar. l. l. et p[ro]p[ri]a sint. s[ed] p[ro]p[ri]a. ex. aggr[ess]i  
 est b[on]i opari expectare est no[n] opari turpe. i. no[n] facere. s[ed] victiosus. aggr[ess]i q[uod] expectare. p[ro]p[ri]a  
 id victiosus est quod est difficultas nam et leu[is] p[ro]p[ri]a alit[er] no[n] emanat nisi p[ro]p[ri]a difficult[er] et b[on]i  
 b[on]i. ut l. quod labor. ff. de c[on]tra. edic. et l. i. in p[ro]p[ri]a ad muni. ex. aggr[ess]i est difficult[er] +  
 q[uod] expectare. nam h[oc] se s[er]u[er]e expectare p[ro]p[ri]a no[n] aut[em] aggr[ess]i p[ro]p[ri]a maior p[ro]p[ri]a p[ro]p[ri]a. reactiuu[m]  
 de fortitudine. nam actus fortitudinis sp[irit]ualit[er] est ar[bit]ra difficult[er] et terribilis p[ro]p[ri]a illud uirtu  
 osus quod amabilis. n[on] actus victiosus de sui n[on] sint amabiles. ut idem p[er]o. et p[ro]p[ri]a h[oc] de p[ro]p[ri]a.  
 d[icitu]r. v. ergo et a. corpus 7 c. p[ro]p[ri]a. ex. aggr[ess]i est amabilis q[uod] plures uirtutes affectu rei p[ro]p[ri]a  
 et plura in ead[em] q[uod] p[ro]p[ri]a p[ro]p[ri]a. in aut[em] de q[ui]an. et uirt[us]. p[ro]p[ri]a. i. p[ro]p[ri]a. de sen. ex. cu[m] p[ro]p[ri]a  
 in q[uod] p[ro]p[ri]a enat[ur]andum de offi. dele. p[ro]p[ri]a in p[ro]p[ri]a. q[uod] inimicos expellere est uirtus q[uod] i[n] p[ro]p[ri]a ex  
 p[ro]p[ri]a p[ro]p[ri]a illud victiosus. quod est laudabile. quia victiosus moribus est bonu[m] laudabile  
 s[ed] aggr[ess]i est laudabile q[uod] expectare. n[on] regulat[ur] plus laudant[ur] aggr[ess]ientes q[uod] fugientes  
 In omni est res. p[ro]p[ri]a. e[ss]et eth[er] tractatu[m] de fortitudine. Vbi dicit q[uod] p[ro]p[ri]alior actus fortitudinis e[ss]et  
 subuenire. Idem tenet ibi albertus. et Cusistratus. Pro euidencia hui[us] q[uod] est aduertendum q[uod]  
 p[ro]p[ri]a dictamen recte v[er]o no[n] est semp[er] aggr[ess]iendum nec semp[er] fugiendum nec semp[er] expectand[um]  
 nam q[ui]a expedit aggr[ess]i. q[ui]a fugere q[ui]a expectare. ex quo app[er]et q[uod] fortitudinis triplex  
 est actus. s[ed] ad aggr[ess]iua. fuga 7 expectatio. et q[uod] aliam fugiendi sit for[is] p[ro]p[ri]a. nam p[er]icula  
 sup[er] horum sunt fugienda. Si enim unus solus uictor aggr[ess]i mille. ul[ter] p[ro]p[ri]a aggr[ess]ientes  
 expectatio e[ss]et for[is] p[ro]p[ri]a. s[ed] laudat[ur] et temerarius. de d[icitu]r p[ro]p[ri]a. triplex est ergo actus fort  
 tudinis. s[ed] ad aggr[ess]iua. fuga. et expectatio. et i[n] p[ro]p[ri]a minimus est fuga. h[oc] p[ro]p[ri]a. nam ille  
 actus est i[n]t[er] ceteros minimus. qui i[n]t[er] ceteros est minimus difficult[er]. cu[m] ars et disciplina sit  
 circa difficult[er]. de fugere est facilis. q[uod] aggr[ess]i. ul[ter] expectare ergo. p[ro]p[ri]a ille actus est

So. 101.

de si. 11. p.

In d[icitu]r.

Rocha.

ff. de c[on]tra. p[ro]p[ri]a. l. i.

l. i. a. q[ui]a. 7 d[icitu]r. columna p[ro]p[ri]a.

Car. a. sine.

C[on]suetudo legis emanat p[ro]p[ri]a difficult[er].

Triplex act[us] fortitudinis.

Fuga e[ss]et minim[us] actus.



[illegible]



Supradicta magis assimilatur vere fortitudini et que non. nam omnes propter ultimam assimilantur  
 in eo quod facit et sic ultima est minime similis in hoc quod eligens. Allic quoniam in uera  
 propter illam que sit ex favore in eo autem quod bonum intersecum omnes difficiunt auera nam pa-  
 est per bonum extremum ut propter gloriam. Allicam per fugam pene allicam per licentiam et stipendia  
 allicam per spem uiuendi. prima autem politica que est per honores et gloria magis assimilatur  
 uere per finem honorabilem. nam honores sunt significatiui uirtutis et ipsa plus operantur  
 tendendo ad bonum publicum. Nam uirtutis bellis insisteret ut exemplat philosophus de hactore  
 in bellice sic se habere. **¶** An forte in bello potius debeat mori expectare quam fugere.  
 Tercio queritur an forte in bello aliquis casu magis debeat mori expectare quam fugere  
 de bello ubi per fugam euadere possit. Et utrum quod non sit mors expectanda. nam illud magis  
 magis eligendum quod est delectabilius et illud minus quod minus per rectitudinem  
 est philosophus ex est delectabilior uita quam mors ergo eligibilior fugere et uiuere quam expectare  
 et mori. oppositum uero dicere philosophus 2<sup>o</sup> ethicorum tractatu de fortitudine et 3<sup>o</sup> tractatu de  
 timore et uolento et contra tractatu de magnanimitate ubi dicit quod plus est moriendo  
 quam aliquid turpe committendum. Sed per eundem quod est aduertendum quod quod potest habere duplex  
 fundamentum. unum uirtutis et fidei ut suponamus allicam uita et beatitudinem et per  
 hoc fundamentum quod non habet grande dubium. nam si aliquis pugnaret contra infideles et per fu-  
 gam suam multi perirent fideles et solus saluaretur tunc preestigenda esset expectatio  
 et mors et est uero non fugiendo assequitur uita corporalem expectando moriendo corporalis consequitur  
 uita anime que est sine quatuor nobilior ergo intelligenda. Et fundamentum potest esse naturale et uirtu-  
 cum secundum legem. ne ut non supponat ulterius uita et tunc quod sit dubium et opinionones diuersas  
 aliquid dicit quod mors expectanda contingere potest multipliciter. uno modo quod uidentur certum sit mores  
 euenerit debet cum expectare nec spes sit de salute nisi cum fuga. alio modo quod si sit allicam cui  
 denique moris in spes aliqua sit potest de uita sine fuga. Iste secundum autem dicitur intelligendas  
 autem aristoteles et allicam philosophus quidam quod magis moriendum. uitalis pugnam. primo at  
 cum dicit nullo modo mori expectandam. plene hoc sic. nam de duobus malis minus malum  
 est eligendum. unde dicitur et est uirtutis in moralibus per minus malum est fugere quam expectare  
 et mori. quod sit minus malum plene nam illud est minus malum per quod pauciora bona perduntur  
 quam illud per quod plura per in morte omnia tolluntur. inquit dicitur et dicitur et per philosophus in fuga  
 perditur solum bonum fortitudinis moralis ergo preterea si melius esset mori hoc esset quod mori  
 esset actus uirtutis si hoc est falsum. nam actus uirtutis uel est felicitas uel ad actum felicitatis  
 tendens si mors est felicitatis destruens quod per si hoc autem eligenda esset mors hoc esset quod  
 fortitudo que est uirtus moralis ad hoc inclinaret si hoc est falsum nam uirtus moralis non  
 tendit ad corruptionem ne uero ad corruptionem ipsam. nam ad hoc sunt leges. unde dicitur sic sit  
 si mors tendit ad destructionem inquit dicitur et dicitur per si hoc quis deberet magis eligere  
 aut forte per bonum proprium aut alienum non proprium quod in morte omne bonum exponitur ut  
 super tactum est. non alienum quod non tantum bonum alteri potest querere quantum sibi perit si cum se  
 plus allicam debeat diligere ut si per se et per se. aqua. Confirmat nam secundum ueritatem et  
 fidem apparet quod uirtuosissimi milites fugiebant in bello ut ipse dicitur magni allicam dicitur  
 totum exercitum per quod potius expectandum et moriendum quam fugendum et hoc plene nam quilibet  
 scit scilicet de necessitate se moriturum esse. Si ergo moriturus foret non perdat nisi id in quo  
 credit mori presentem differere a futurum si iste non differat in hoc quod est amittere bonum  
 uirtutis quod perdat si differat in hoc quod est diutius retinere et minus diu. tunc arguitur  
 sic illud eligibilius est in quo plura bona acquiruntur et pauciora perduntur sic est in proprio  
 ergo plene hoc minor nam si moriturus querit actum fortitudinis qui est nobilissimus si  
 fugit nihil querit nisi annuatim plus tempore donec ducet diem et sic querit tempus. Confir-  
 matur nam certum est quod assistentes circa delectationes corporales magis eligere modico  
 tempore uiuere delectabiliter quam longo penali. quod sic delectationibus autem hoc potius est eligendum.  
 Opinione prima credo ueram nam ut dicitur in alio articulo actus fortitudinis sunt adgressus  
 fuga et expectatio nam non sunt insequendum nec semper fugiendum nec semper expectandum. primo  
 cum dicimus uis. **¶** An quibus una cum comitibus suis uitalis in hostes preueniens et ipse  
 totum ostendens circa mandatum dicitur sit capite puniendus. **¶** Quarto queritur ponit  
 dicitur mandatum ne quis properet in hostes sub pena capite. Quidam strenuissimus mi-  
 les cum magna comitibus militum quibus petat quod mandatum dicitur prorupit in hostes et ipse  
 strenuiter totum hostes afflicti dedit. quod in capite puniendus sit. Et utrum sic nam dicitur  
 in bello qui reprobantur adice fecit aut mandatum non fuit capite puniendus. etiam sic bene apparet  
 per de re. mili. l. de fort. et in bello plene quod uoluit asserere obedientiam ad ipsam  
 tenere si. man. l. si remunerandi. et si pignus est. si periculis. si ad maced. l. si et si. et y. si.

Patet.

Patet.







Sicut an alioquin et ante unare. Apper q neutrum cu causa se impediant. p. de usuf. l. quociens  
 de p. d. i. g. h. e. d. m. v. x. p. q. i. c. i. Apper q neutrum al p. d. e. d. m. q. d. difficultas p. p. t. o. n. e  
 et p. p. m. i. s. s. i. o. n. e. n. o. p. u. n. t. o. b. l. i. g. a. t. i. o. n. e. m. s. s. d. e. u. e. i. o. b. l. i. g. a. t. i. o. n. e. m. q. d. illud p. t. e. m. p. e. r. q. u. e. d. u. o. d. i. n. a. s.  
 i. n. r. e. u. t. p. d. o. p. i. s. l. i. d. i. o. p. (Quidam dicit l. e. e. q. u. a. n. t. a. t. i. o. n. e. e. x. e. m. p. l. o. s. i. n. d. i. o. p. d. i. c. t. o. q. u. i. s.  
 u. d. e. u. t. u. t. r. a. q. d. n. i. m. i. n. t. e. r. f. i. c. i. a. u. n. a. r. e. p. o. t. e. r. i. t. q. u. e. n. o. l. u. n. t. s. s. d. e. s. i. l. l. i. q. u. i. d. i. n. g. r. a. m. a. l. i. c. e. t. a. l. i. s.  
 d. i. c. i. t. q. u. i. u. n. a. b. i. t. p. o. t. e. d. n. i. m. e. t. a. u. i. p. o. u. n. t. u. t. i. n. b. i. b. l. i. f. e. u. d. p. l. i. f. e. u. a. l. i. i. m. p. i. a. l. e. m. q. d. illud. s. s.  
 l. a. n. l. i. m. o. p. i. s. e. q. u. i. p. o. i. n. p. i. h. a. l. i. q. u. i. n. a. m. p. o. t. e. r. i. t. f. i. d. e. l. i. t. a. t. e. f. u. a. r. e. t. u. r. l. d. i. q. u. i. a. t. u. a. q. u. i. e. t. e. r. i.  
 u. l. d. o. t. e. n. e. n. s. (Quidam t. e. t. p. o. f. u. a. r. p. s. o. n. a. l. i. t. e. r. p. s. a. b. s. t. r. a. c. t. i. s. f. i. l. i. a. p. a. n. a. t. u. r. n. a. f. r. u. d. i. c. d.  
 e. n. d. i. u. l. l. u. n. a. e. s. i. n. a. u. t. n. e. c. o. b. q. u. i. u. n. t. f. o. s. a. l. u. a. f. i. d. e. l. i. t. a. t. e. p. m. i. q. e. s. t. d. n. a. h. o. n. o. l. e. r. i.  
 q. i. f. i. n. e. n. d. e. f. o. p. s. u. b. s. t. a. n. t. i. n. o. n. a. c. e. t. p. m. o. q. u. o. d. s. a. l. u. a. r. i. f. u. t. i. n. u. n. a. m. e. r. o. f. i. s. s. d. e. d. i. s. s. a. l. l. i. u. s.  
 t. e. n. e. n. s. u. n. a. r. e. d. n. i. m. a. p. r. e. m. u. l. p. a. a. l. i. a. f. i. l. i. u. m. (Quinto q. d. an d. i. s. s. a. l. l. i. u. s. t. e. n. e. a. t. u. r. u. n. a. r. e.  
 d. n. i. m. a. p. r. e. m. u. l. p. a. t. e. r. c. h. i. n. f. i. l. i. u. m. l. o. g. o. f. o. r. m. a. t. q. u. e. m. x. x. q. v. c. d. e. f. o. r. m. a. e. t. t. e. n. e. t. g. y. s. e. n. a. m.  
 f. i. l. i. u. s. s. o. l. u. m. u. n. a. r. e. n. o. o. b. l. i. g. a. t. i. o. n. e. e. p. r. i. e. r. d. i. s. s. a. l. l. i. u. s. d. n. o. u. n. a. r. e. u. r. a. m. e. n. t. i. u. t. i. n. p. a. l. e. d. p. o. s. t.  
 h. e. c. p. l. a. c. t. e. d. i. n. u. s. f. e. u. i. n. e. q. u. e. a. d. m. o. f. e. u. a. d. m. i. a. l. o. a. l. i. q. u. a. l. i. t. e. r. s. e. n. a. t. q. u. i. n. e. q. u. i. m. i. l. i. t. e. s.  
 i. n. q. u. i. p. u. n. t. a. t. e. m. p. o. n. d. e. r. a. n. d. a. m. q. u. a. l. i. t. a. t. e. m. i. n. p. e. n. d. e. n. d. i. s. u. b. s. t. a. n. t. i. s. (An c. u. i. u. s. d. u. a. s. a. u. t. a. n. t. i. u. m.  
 t. e. n. e. a. t. u. r. u. n. a. u. n. a. r. e. a. a. s. s. i. a. m. r. e. s. s. d. e. x. i. s. t. o. q. u. i. a. n. c. u. i. u. s. d. u. a. s. c. u. i. t. a. n. t. i. t. e. n. e. a. t. u. r. u. n. a. r. e.  
 u. n. a. a. c. t. a. a. s. s. i. a. m. e. o. d. i. c. u. t. d. e. m. e. s. t. i. n. d. i. s. s. a. l. l. o. d. u. a. s. d. n. o. p. s. s. d. e. d. i. s. s. a. l. l. i. u. s. u. o. c. a. t. u. s. a. d. i. s.  
 t. e. n. e. a. t. u. r. i. p. m. s. e. q. u. i. i. n. p. a. l. e. u. l. t. r. a. m. a. r. i. n. e. a. d. p. u. g. n. a. n. d. u. m. d. b. a. r. b. a. r. o. s. (Sextio q. d. d. n. e. m. u. l. t.  
 u. e. a. d. p. r. e. t. r. e. m. o. t. i. o. n. e. p. o. n. e. u. l. t. r. a. m. a. r. e. a. d. p. u. g. n. a. n. d. u. m. a. u. t. b. a. r. b. a. r. i. s. i. n. q. u. i. d. d. i. s. s. a. l. l. i. u. s. u. o. c. a. t. u. r.  
 a. b. e. o. t. e. n. e. a. t. u. r. i. p. m. s. e. q. u. i. a. d. b. e. l. l. i. u. m. e. o. f. i. d. i. o. s. e. s. t. t. a. l. i. o. f. a. m. i. s. e. t. a. d. i. c. t. o. s. q. u. i. p. r. e. d. e. c. e. s. s. o. r. e. s. s. u. i.  
 e. t. i. p. s. e. q. u. i. t. e. n. e. a. t. u. r. i. l. l. u. s. a. c. c. e. d. e. n. s. e. t. d. i. s. s. a. l. l. i. u. s. i. p. m. s. e. q. u. i. e. t. n. u. c. t. u. r. e. t. l. i. b. e. r. i. q. u. i. n. u. c. a. d. o. p. i. a.  
 o. p. i. a. m. e. s. s. d. e. o. p. i. a. l. i. p. o. p. e. e. t. l. p. s. s. d. e. q. u. i. a. c. l. i. q. u. i. u. n. i. u. s. o. r. e. p. r. e. s. t. a. b. u. n. t. u. r. i. n. a. d. n. o. s. u. p. i. o. r. i. s.  
 i. n. d. e. r. a. n. t. a. r. b. i. t. r. a. r. i. o. b. o. n. i. p. r. i. e. a. u. t. f. i. t. i. n. l. i. b. e. r. i. q. u. i. n. o. p. o. s. s. i. t. n. e. c. q. u. i. e. n. t. u. r. t. u. c. s. e. n. s. s. s. d. e. o. p. i. a.  
 l. i. p. o. p. i. s. s. s. d. e. a. r. b. i. l. i. f. i. a. d. i. c. t. o. s. a. s. i. u. d. i. c. t. o. s. h. e. c. e. t. i. a. t. a. n. g. e. n. t. s. p. e. c. i. n. s. p. e. c. i. n. d. e. f. e. u. a. i. p. m.  
 (An s. i. n. t. e. n. e. a. t. u. r. u. b. i. q. u. i. s. e. q. u. i. d. n. i. m. a. d. b. e. l. l. i. u. m. r. e. s. s. d. e. p. r. i. n. c. i. p. i. o. a. n. t. e. n. e. a. t. u. r. e. s. e. q. u. i. d. n. i. m.  
 u. b. i. q. u. i. a. d. b. e. l. l. i. u. m. d. h. i. n. s. n. o. e. s. t. d. i. c. t. u. m. a. u. t. i. n. e. o. d. n. o. p. l. e. n. a. h. a. t. p. o. t. e. s. t. a. t. e. m. d. n. i. n. o. n. o. n. i. m. i. s. s. e. n. i. a. t.  
 i. n. c. o. s. s. s. d. e. h. i. n. s. q. u. i. s. i. n. u. l. a. l. i. u. r. l. i. e. t. y. (An l. i. b. e. r. i. d. e. a. n. t. t. e. n. e. a. t. u. r. e. s. e. q. u. i. p. a. t. r. o. n. i. u. a. d.  
 b. e. l. l. i. u. m. r. e. s. s. d. e. n. o. n. o. q. u. i. d. d. e. l. i. b. e. r. i. s. e. o. l. i. b. e. r. i. t. e. n. e. a. t. u. r. e. a. d. o. p. i. a. s. o. l. i. t. i. m. n. e. c. i. n. s. p. i. l. i. t.  
 r. o. s. s. i. n. t. e. i. o. i. n. p. o. m. s. s. d. e. o. p. i. a. l. i. p. o. p. i. s. s. s. d. e. q. u. i. a. c. l. i. q. u. i. s. i. n. p. l. i. f. e. u. a. l. i. s. s. s. y. (An a. g. r. i. c. o. l. e.  
 i. n. a. n. t. t. e. n. e. a. t. u. r. e. s. e. q. u. i. d. n. i. m. a. d. b. e. l. l. i. u. m. r. e. s. s. d. e. p. r. i. n. c. i. p. i. o. a. n. t. e. n. e. a. t. u. r. e. s. e. q. u. i. p. a. t. r. o. n. i. u. a. d.  
 a. c. c. e. d. e. n. s. e. t. e. n. e. a. t. u. r. e. s. e. o. a. g. r. i. c. o. l. e. d. i. u. d. i. c. a. n. t. u. r. i. n. a. s. c. r. i. p. t. i. o. n. e. s. e. t. c. e. n. s. i. t. o. s. a. s. c. r. i. p. t. i. o. n. e. s. d. n. e. p. r. e. s. c. r. i. p. t. i. o. n. e.  
 s. o. l. o. a. s. t. r. i. c. t. i. s. Vnde i. n. a. d. u. e. n. i. n. t. i. o. s. d. i. c. i. t. u. r. i. n. t. e. n. e. a. t. u. r. e. s. e. n. a. a. d. a. s. t. r. i. c. t. i. o. n. e. m. a. l. l. i. a. a. d. p. l. a. n. d. a. m.  
 p. r. i. m. a. q. u. i. a. p. r. i. m. i. t. u. r. d. n. o. s. o. l. i. n. u. g. i. a. s. o. l. o. r. e. c. e. d. e. r. e. a. l. l. i. a. q. u. i. a. p. r. e. s. c. r. i. p. t. u. r. s. e. a. s. c. r. i. p. t. i. o. n. e. s. e. t. d. e. h. i. n. s. s. e. q.  
 t. u. r. e. i. n. l. f. a. m. i. l. i. a. e. d. e. a. g. r. i. e. t. c. e. n. s. i. t. i. n. e. h. o. b. e. t. f. i. n. o. s. p. r. e. n. e. n. u. l. l. a. e. s. t. d. i. s. t. r. e. t. a. u. t. l. i. n. e. d. i. u.  
 e. e. n. e. t. d. i. c. o. p. o. t. e. q. u. i. d. d. i. f. f. e. r. u. t. q. i. f. u. n. t. a. l. l. i. e. n. a. r. i. p. r. a. p. e. a. l. l. o. e. t. f. i. n. e. u. t. d. i. l. l. n. e. d. i. u. a. s. p. r. i. n. c. i. p. i. o.  
 n. o. f. i. n. e. s. o. l. o. u. t. l. y. e. e. n. i. i. n. t. e. m. a. s. c. r. i. p. t. i. o. n. e. a. u. t. d. n. i. u. l. t. i. m. a. t. e. o. r. d. i. n. a. r. i. p. o. s. i. n. t. i. n. p. o. s. s. e. s. s. i. o. n. i. b. u. s.  
 q. u. i. a. s. c. r. i. p. t. i. o. n. e. s. u. n. t. i. n. a. u. t. d. f. a. n. c. e. p. i. a. a. s. c. r. i. p. t. i. o. n. e. s. u. n. t. a. u. t. n. o. i. n. t. e. m. a. s. c. r. i. p. t. i. o. n. e. s. f. a. c. i. e. n. t. e. t. i. n. e. n. e.  
 d. n. o. a. t. t. r. i. b. u. n. t. i. m. n. e. c. o. d. a. t. e. m. m. u. t. a. n. t. u. t. a. d. a. g. r. i. e. t. c. e. n. s. i. t. i. n. e. f. u. i. a. u. t. q. u. a. l. i. t. e. r. e. s. f. a. c. i. e. n. t. i. b.  
 d. n. e. e. t. i. n. e. n. t. i. b. l. i. b. e. r. a. n. t. a. s. u. l. i. o. d. i. c. t. o. s. u. t. i. n. a. u. t. d. i. n. p. a. l. i. o. s. e. x. q. u. i. b. l. i. c. e. c. l. a. u. s. a. p. p. e. r. q. u. e. s. t. u. t.  
 q. u. e. d. h. i. n. t. d. n. i. i. n. a. s. c. r. i. p. t. i. o. n. e. s. e. s. t. i. n. e. r. e. l. a. t. i. a. d. p. o. s. s. e. s. s. i. o. n. e. s. q. u. i. b. a. s. c. r. i. b. i. m. u. r. e. t. s. i. c. a. p. p. e. r. q. u. a. n. t. i. a.  
 d. n. o. a. d. e. n. e. u. l. t. i. o. n. e. r. e. a. p. s. o. n. a. l. i. a. n. o. a. r. t. a. n. t. i. s. i. s. e. x. q. u. e. n. t. i. a. a. l. l. i. u. d. f. i. t. i. n. d. u. c. t. u. m. C. e. n. s. i. t. i. a. u. t. s. u. n. t.  
 q. u. i. c. e. r. t. e. r. e. i. n. u. a. n. t. i. a. m. p. l. a. n. d. e. a. s. t. r. i. c. t. i. s. s. u. n. t. e. q. u. i. c. a. c. o. l. l. i. y. e. t. i. a. i. n. h. o. c. d. i. f. f. e. r. u. n. t. a. b. a. s. c. r. i. p. t. i. o. n. e.  
 q. u. i. a. a. s. c. r. i. p. t. i. o. n. e. s. s. u. n. t. a. s. c. r. i. p. t. i. o. n. e. s. a. d. e. r. t. a. r. e. p. l. a. n. d. a. m. p. u. t. a. t. e. r. r. a. n. i. l. q. u. a. r. e. n. t. f. r. u. e. n. t. i. u. i. n. a. u. t. e. r. t. e. r. e. u. t.  
 e. t. d. e. h. i. n. s. i. n. f. e. r. i. u. t. d. i. u. p. p. l. a. c. i. n. f. e. r. i. q. u. i. n. e. c. c. o. l. o. n. i. n. e. c. i. n. q. u. i. l. i. n. n. o. c. t. i. o. a. c. t. u. a. p. o. s. s. i. n. t. (An  
 a. f. e. d. e. r. a. t. o. s. p. o. s. s. i. t. d. n. e. u. o. c. a. r. e. u. t. i. p. m. a. u. e. n. t. i. n. b. e. l. l. o. f. i. t. a. Vnde i. n. q. u. i. d. d. e. a. f. e. d. e. r. a. t. i. o. n. e. e. t.  
 c. o. l. l. a. t. i. o. n. e. n. i. q. u. i. d. d. n. e. p. o. t. e. r. i. t. o. f. e. d. e. r. a. t. o. r. e. s. s. u. o. s. p. r. o. c. a. r. e. a. d. b. e. l. l. i. u. m. u. t. i. p. m. u. n. a. r. e. t. e. n. e. a. t. u. r. e. s. s. o. f. e.  
 d. e. n. a. t. i. s. s. u. n. t. p. l. e. n. e. l. i. b. e. r. i. s. l. i. a. d. a. l. i. q. u. a. t. e. n. e. a. n. t. e. c. o. p. e. u. t. l. n. o. d. u. b. i. t. o. s. s. d. e. c. a. p. e. t. p. o. s. t. r. e. i. n. h. i. s.  
 i. n. p. o. n. d. e. r. a. n. d. a. e. s. t. q. u. e. n. t. i. o. e. t. q. u. e. n. t. i. o. n. e. m. o. d. i. u. s. u. t. a. d. d. n. a. n. c. f. u. e. t. u. r. s. s. d. e. p. o. s. i. t. l. i. e. f. i. o. n. e. n. t.  
 e. t. l. i. d. p. o. s. s. (An s. u. b. d. i. c. t. i. o. n. e. u. i. s. d. i. c. t. o. r. i. o. i. n. m. i. n. o. t. e. n. e. a. t. u. r. e. s. a. d. b. e. l. l. i. u. m. a. c. c. e. d. e. n. s. (Quidam  
 q. i. q. u. i. d. d. h. i. n. s. q. u. i. r. e. u. i. s. d. i. c. t. o. r. i. o. i. n. m. o. d. i. u. s. s. u. n. t. s. u. b. d. i. c. t. i. o. n. e. n. o. a. u. t. s. u. n. t. v. a. s. s. a. l. l. i. e. o. t. a. l. i. o. s. a. c. c. e. d. e. n. s.  
 t. e. n. e. a. t. u. r. e. n. e. c. q. u. e. n. t. i. a. a. d. d. e. p. r. i. n. c. i. p. i. o. q. u. i. a. h. e. c. f. a. c. i. e. n. t. e. q. u. i. d. d. i. c. t. o. f. a. l. l. i. t. h. o. r. e. u. n. i. l. a. r. e. d. n. i. m. i. n. q. u. i. b. u. s. d. n. e.  
 p. o. s. s. i. o. n. e. q. u. e. e. x. t. r. a. n. t. a. a. m. u. n. e. r. i. b. i. p. s. o. n. a. l. i. b. q. u. o. r. u. q. u. i. d. a. m. e. x. a. s. a. n. t. u. r. e. r. a. t. e. u. t. i. n. m. i. n. o. r. e. s. e. t. f. i. n. a. r.  
 i. l. l. e. s. q. u. a. n. t. u. t. e. q. u. i. e. t. i. n. r. u. b. r. o. e. t. m. a. g. i. s. e. q. u. i. d. a. m. i. n. f. i. r. m. i. t. a. t. o. u. t. e. q. u. i. m. o. r. b. o. p. r. o. t. i. u. s. (De p. s. o. s. q. u. i. e. x. t. r. a. n. t. a. a.  
 a. u. d. i. a. m. l. i. b. e. r. o. s. n. u. o. u. t. e. q. u. i. n. u. l. l. i. p. r. o. t. i. u. s. a. u. d. i. a. m. p. p. r. e. s. t. i. o. n. e. u. t. e. d. e. p. r. e. s. t. e. t. m. e. a. u. d. i. a.  
 s. e. u. u. t. m. u. l. i. e. r. e. s. e. t. a. s. i. m. i. l. e. s. a. l. f. u. n. t. r. e. g. u. l. a. (De p. s. o. n. e. n. o. a. s. t. r. i. c. t. i. o. n. e. a. d. b. e. l. l. i. u. m. l. i. b. e. r. i. a. c.  
 c. e. d. e. n. s. i. b. i. s.

P. a. a.  
 q. q. o.

P. a. a.  
 G. q. o.  
 P. a. a.  
 A. q. o.

P. a. a.

P. a. a.

(De a. s. c. r. i. p. t. i. o. n. e. s.)

(De p. s. o. s.)

(De c. e. n. s. i. t. i. o. n. e. s.)

(De p. s. o. s. q. u. i. e. x. t. r. a. n. t. a. a. m. u. n. e. r. i. b. i. p. s. o. n. a. l. i. b.)

Et aut dicitur sunt de hys p. s. o. n. e. que sunt qualiterque a. s. t. r. i. c. t. e. r. e. s. t. a. t. u. d. i. c. t. u. r. d. e. p. s. o. n. e. p. l. e. n. e.  
 l. i. b. e. r. i. s. a. d. b. e. l. l. i. u. m. p. r. o. c. a. r. e. n. t. e. p. r. o. a. u. c. u. d. e. n. t. i. a. e. a. c. c. e. d. e. n. t. i. b. a. d. b. e. l. l. i. u. m. n. o.  
 n. e. c. e. s. s. i. t. a. t. e. n. e. c. d. e. b. i. t. o. n. e. c. e. s. s. i. t. a. t. e. a. d. d. e. b. i. t. o. a. c. c. e. d. e. n. t. i. b. e. i. n. t. e. n. t. e. s. t. a. u. d. i. a. m. a. c. c. e. d. u. n. t. p. l. e. n. a. l. i. b. e. r. a.  
 n. a. d.



[illegible]

**R**estat uidere quid de his qui uadunt qd teneant ad annidra, ut puta quia simile ul aliud  
sub pndu recepit ab eo nisi quid tunc ager qd illud que uinat ad dndra, ut e. eo si sic uadit  
in thema supponit. Vadit aia dissolucnde obligatone nullo, que tñ no pot dñe in casu nec  
de ea examp pot in iudicio coqua p d pot hñ. l. si filius, c. qñ hñt. de test. c. in officio. Et sic  
inferri q vadit nō nō obligandi cū idē acut uis formit supmo, nō possit parere qños effe  
p d. v. ob. l. pgo. x. p d. qñ. mñ. l. cū p. c. filius et. p. alio. Et si dñe hic nō est quia dissolucnde



(qđ nō ē diffolui nō pōt.

**R**equit uideri de his qui locant quas suas, ut si quis affirmatur collectorem saluare, si in talis agant q̄ducatores, in illis locatores, agant q̄ducatores, eo. talis locat opus et rem et ius p̄ducere uenire, solum ad id ad quod q̄ducitur, non agunt tenet, ut. l. si quis, de iudi. ff. lo. et q̄duc. et hoc nisi aliud speciale p̄m̄ inueniat ul̄ querens aliud inducat, ut ē in ymbra q̄ p̄stint emende opor. de p̄duc. in p̄mo q̄ducendo, al̄ sit regula, ut ē. de dictu. c.

**R**espice etiam uidere de hijs qui accedunt ad spolanda decubanda. Et de hijs non est dubium  
quod talibz non quiescit animo: sed super re turpi nulla inducitur obliuio. ff. de uer. ob. l. uelut. et de  
matrimonio. or. l. si ex plagne. ¶ An clerici ad bellum accedere possint.

de cinq.

Fi. m. p. 100



Comerlando.



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**Q**uinto dicendum refert de spoliis et capivis que in bello sunt. Et primo quod an in bello aliquid capiendi efficiatur. Dico persone capto et rei. Et an sit locus postliminio. Item bello pugnare pugnare inducit de quo sup dictum est. Hoc autem procedunt. nam capiendi efficitur dno. Capti efficiuntur sui. ut l. hostes. ff. de cap. et l. hostes. ff. de v. s. Si autem bellum non sit ex edicto pugnare. Si aliter, ut cum sit defensio recipi suam. nunc scilicet qui bellum indicat. ff. miss. dicitur sup. et p. quo bellum indicat potest statueret quod quilibet capiendi aliquid in bello. illo efficiatur dno recipi capivis et persona deponit. donec p. sentiet superiori. In tenet Innoc. in c. sic de iur. iur. remittens sup. hoc ad no. in c. anobis. de sen. exco. Subdit Innoc. quod si non fecit aliquis spoliatio. potest illum dampnare. de iniuriis per iniuriam sine sue iurisdictionis. ut in aut qua in p. n. et c. u. de rei. ag. op. Subdit quod si bellum indicans nulla habet iurisdictionem sed solum defendit se et bona sua. tunc non licet sibi iniuriis suis capere et capti deponere. quod solum licet sibi se defendere. tunc cum moderamine inculpate turbe. Et ibi v. l. de res. spo. olim. Subdit quod si mutaret res iniuriis sui quod iniuriis non potest vi. bo. rap. nec iniuriare quia obstat exceptio parit criminis. Hoc omnia ut dixi no. Innoc. in c. sicut de iur. iur. Item dicitur Innoc. p. uero uero in d. n. quod dno p. delictum postliminio suam potest que p. uero dno rei sue. et nulli iurisdictionis. Item autem dno non credit uero in d. n. Item dno p. si uero non recognoscere sup. de fco indicat bellum alii etiam non recognoscere et sic quilibet sit hostes ipsi. Item autem quod sine aliqua ostendit ibi uendit locum quod in bello indicat ex edicto pugnare. na hoc tenet ex iur. gentium antiquis moribus introducto salus quod p. forme qua modernis temporibus non potest quod capti in bello ista efficiantur sui nec uenduntur. nec in talibus locis est hodie postliminio. Tercium dno legendum illam decretalem alii replem. p. uero illam. na spoliatio an omnia est restituenda. nec opposi potest exceptio criminis. ut in c. in litteris. et c. ut de qua de res. spo. non ergo capietur p. uero spoliatus de eo crimine. nec de alio etiam maiori. nunc scribendo credo saluam posse esse. Innoc. duobus modis. primo quod non loquitur Innoc. in casu in quo spoliatus ultimus intenter interdem dno. vi. p. uero loquitur in casu quo incipit. vi. bo. rap. ut in iur. que ut claret nullum differat. Ut dicitur quod Innoc. non intelligit quod opponat exceptio criminis in modum criminis. si in modum alterius spoliatio. de qua exapi potest quod agens etiam intercedo recipiendo. ut restituitur exceptio spoliatio. ut pbat rex. in c. sup. spoliatio de ordi. cogni. Item Capti in bello duas ciuitates efficiantur sui et dnuis eorum querantur. Item in isto bello que fiat una ciuitas d. aliam possint dici hostes. ut sui efficiantur. capti et dnuis eorum que mouet. Appet. q. no. ut. l. si quis ingenuus in p. ff. de cap. in d. u. ut. nam quilibet ciuitas p. se fiat ipse. et sic ut quod sint hostes. sicut ipse. etiam et saracenus. Et. q. n. est quod p. me duas ciuitates. que sunt sub eodem dno non est locus capivis et postliminio. ut. l. si quis ingenuus ff. de cap. Et q. n. est opinio me duas ciuitates. que non recognoscunt sup. de fco. Et pono ut tollat omne dubium. quod quilibet sit hostes ipse. quia uellet. nunc uero gentium antiquis moribus introducto est locus o. ciuitatis et una postliminio. si p. mores. modernis temporibus et consuetudines antiquas.



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**temporalis bellare et c.** ¶ An licet bello civili defendere possit ecclesia / et sup hoc quocumque  
militari planū p sic pbat ex xxij q vj e maximianus .xv. q. d. augustinus. lxxij di.  
adrianus. xxiij q viij c. ignitur et c. de iur. et glo. magis in cap. autem. q. d. pbat qd tpo.  
in c. dilecti de sen. exto. li. d. ¶ An liceat epis ad bellum accedere sine licencia pape.  
¶ An liceat epis ad bellum accedere sine licencia pape dicunt quidam indistincte q nō  
p can qui videtur hāc exisse decr. xxij q viij. quo ausu. et c. finobis et c. si quis eps.  
Nulla. c. hant uarios intellectus in hac ordo utru fuerint ul sponte ad bella aliena  
maxime secularia accedere scilicet si defendant iura sua. ¶ An prelati papalibz que tenent  
ab impatore et c. ¶ An prelati papalibz que tenent ab impatore tenent solvere tributū  
p bellis ab eo mdictis et dicendum q ut pbat ex xxij q viij. a. g. ecce. cū duobz s. sequenbz  
usq ad p. dms. ¶ An capis in bello usq sit misendum. ¶ An capis in bello usq sit  
misendum dicendum q sic nisi pcedat timor pcuratio pacis pbat ex in c. noli. xxij q i.  
in fi. et p illud c. expostui ut intelligebat hugo fuit amputati caput Coradino ¶ An  
ecclesia debeat indicare bellum contra iudeos. ¶ An ecclesia bellū debeat indicare contra iudeos  
dicendum q nō cum ubiq parati sint puniri nec psequantur xpianos secus de saracenis  
quoniam psecuti sunt hic est tex. xxiij q viij diffini. et ibi notat glo. q nec etiā saracenis  
oportet indicenda nisi xpianos psequerentur. ¶ An degentes in bello qui pugnare nō possunt  
de c. q sed dum nō al q salio sint utiles. ut no. in c. ex multa. de voto. ¶ An liceat plane re  
tineatis iurisdictio etc. ¶ An liceat prelato rē tyralis iurisdictiois bella indicare  
et eo interesse et alios pcurari ad pacem et de q sic ut no. moes in. c. qm dubijs.  
de peno. ¶ An liceat placo p iniuria subdia. et c. ¶ An liceat placo p iniuria subdia sui  
de qua nō sit iniuria bellum indicare et alios q iniuriantes in bello capere et de c. q sic  
ut no. moes in c. dilectis de app. et c. sicut de iur. iur. ¶ An delegatus pape possit bel  
lum indicare. hoc est dicit ap ppe muotau brachiu seculari. questio est vulgata et  
tractata in c. significasti de offi. dele. p moes. ¶ An bella indicia p ecclesiam q excoicatos sit  
meritoria. ¶ An bella que indicat ecclesia q excoicatos sint meritoria. et dicendum q  
sic et multis locis est placet et alijs singulis precari alios ad pugnandum p bane. text.  
xxij q v. ad omnia et c. sequenti et c. viij c. ignitur usq ad p. ecce. et c. in. c. sicut et eccl.  
leniam. ¶ Quae sint grā bellorum corporaliū. ¶ Consequent qd quot sint grā bellorum  
corporaliū de quibz repitur in iure expressum do. vij. repitur. iure expressa primum  
romanū appellatur quod fideles contra infideles et hoc iusti est. de heret. excoicatis. y.  
Et dicit romanū qz roma capud fides. xxij q i. hoc est fides et c. qm. de summa. ter. c. n. et sic  
pr̄ intelligi. l. hostes ff. de cap. et post. re. ¶ Sū quod sit iuste iudicia legitimi hinc meo  
impriū q armatores et rebelles ut l. qnet ff. q ne. cū. luy. et l. uy. ff. de iur. o. iudi. c. ne  
quis in sua cū l. una. et hy pprie nō dicitur hostes nam quod de suo ad nos puenit nīm  
effiat nō aut oī sic intelligit. l. s. s. in pace. ff. de cap. ¶ De caū dicit bellum psumptum  
quod faciūt iudicia inobedientes de peno. de. ij. s. v. ad fine. de ma. et. o. c. si quis venerit  
ff. de rei ven. l. qui restimere ff. ne ius. fiat. c. q in po. mi. l. uy. c. de sodia. li. in fi. s. cū  
trae bellum quod licet est qnāq iuris iuste pceditur et est liciti quo ad illum cui ge  
ritur ut xxij q y. c. si dñs. de sen. exto. finē. i. g. nec ille. c. qm. l. dñs. fine iudi. qe um. l. i.  
et l. y. et cū pponi et dñy. ut de sen. epa. dilecto li. d. ¶ Quid in iusticiā quo ad illos q  
hoc faciūt q iuris iusticiā. de qui se defendit q iudicia autem et iuris ut de sen. exto. p  
dimus. et c. gangit. et c. in audiencia. ¶ Septimū voluntarii quo utitur pnapis secularis  
nei tps sine pnapis autem et hoc iusti q nec sine pnapis autem licet arma pōne  
c. ut ar. upie in rubro et negro. li. xy. man. de man. pn. col. in. in aut de armis. ad. h.  
ymō q facit madut. l. ul. ma. p. ad. l. ul. max. l. uy. ¶ Septimū dicit necessarium et licitū  
quod faciūt fideles iuris iuste se defendendo q ipso iudicio nā dñy dñ. repellere licet  
ff. de iusi. et iur. l. ut vim ai sp. de hys p hostem. de homie. p human. li. d. p dech. in. c.  
iustum xxij q y. Ex his inferunt que bella sint licita et que illicita nam licita dicitur  
re. indicente. illius qque rei et cū et iuris pmitte. Inlicita cō. Causa aut bna  
gnalis iustificat. f. garmaca in iuste resistent. Cum enī ab eo qui obnoxius est iusti  
cia hei nō pot tūc licet bellum indicare nam in subsidium recurrēt ad illud suffragiū  
xxij q i. quid culpatur. et c. noli. xxij q viij. si nulla. ff. de usus. l. si iussuetudo. et de  
ha. f. q sit licitū notat p moes de restitu. sp. ci. clm. i. p hostem infama. de treu. et pace.  
q. quid suffragiū. p beatū thoma in pa. fa. q. xl. articulo pō. fo. et uy. p qd in libro de  
regimine pnapum in fine. ¶ De bello pcurari quod fit ob tutelam sui et est i  
quatuor tractibus utray pnapalis. Vnde.



Unius est apud eos

Sette de marta pusa pe gaură  
rădă.

(Definição, princípio e fim nãos.)

**Q**uo tempore primo innotuit in apali de bello inuisibili esse. restat nunc quatuor modis de bello particulari quod sit ob noticiam sui. Et in ipso tractatu sic procedam. nam primo demonstrabo quod sit. Secundo quot sint species eius. Tercio quo ordine inducantur. Quarto quibus licent. Quinto a quibus. Sexto quibus licent. Septimo quibus licent. Octavo quo sit ipse finis. Quid sit particulare bellum. R. n. bellum. ob noticiam sui particularem inducant. Dico q. Intra primum autem quod quod sit particulare est quicquid exerceat per diffinitionem humano agentis: preterea etiam et violentas particulares illasque pueriens ad ipsius exclusionem tendens. hoc patet mentaliter per textum. l. ut vltim. ff. de iust. et iur. et l. qui sciam et qui cum alio ff. ad l. ad quod et l. i. c. vlt. et l. i. m. s. si quis ff. de vi. et vi. ar. et c. olim de res. spo. et dicitur quod non. nam ostendit ponit pignus ut potest est in diffinitione belli generaliter superius ut o. primo innotuit i. p. po. dicitur exorta per diffinitionem et c. et illud potest latere diffinitionem nam per hoc differt ab bello inuisibili et alijs speciebus belli. Secundo dicitur ad ipsius et c. hoc est ad finalem ipsius belli. Et quot sint species particularis belli. R. n.

**C**redendum est quod quatuor sint species prae dictae. quod sunt due. nam quoddam iustum. quoddam iniustum. ut circa iustum bellum. Inimicitie. Bellum autem prae dictae iustum est duplex. nam quoddam fit propter iniustitiam unius corporis. vel adhaerentium sive congentium unius corporis. de hoc in praesentia tractatum. Insuper. aliud fit propter iniustitiam corporis iniusti. vel propter ut dicimus in inimicitie. quae appellatur corpus et singuli appellantur membra et propter quod aliquod unum. scilicet. propter ad municipium. scilicet. quod maior propter de iure iuris. scilicet. si hac sit qui maius habet de exteriori. prae dicta. scilicet. in dilectione. et ibi non. de iure sicut in iustitia. propter defensam cuius sui ab exteriori oppositi. de praesentia iniustitiam iudicis oppositi. bellum iudiciale hoc appellatur. prae dictae propter iniustitiam iniusti corporis. sive propter. et hoc appellatur. prae dictae. repositiva de qua inquit ut non fiant iniustitiae. propter totum. de iure. et uno propter totum. scilicet. de. et de hoc bello dicitur. propter tractatum propter bellum autem iniustum prae dictae. ob iniustitiam unius corporis iniusti. est quoddam exterior. propter diffinitione humano appetitui praesentia. perveniens ex illius iustitiae prae dictae. apud. vel publica persona ex officio iniuste inferenti. et iniuste exclusionem tendens. cum moderamine inculpato iustitiae. ut hoc placuit. in. si. et in. vi. cum ibi non. In iustum autem est ubi prae dicta vel aliquod prae dictae. de praesentia. ut in praesentia declarabitur.

Quo meo introductu sit pncipare & dnm. ps.

**F**acta tunc in q. quod uix ha puenit et operatur. Quid. que est in l. ut dicitur. ff. de insti. et uix. sup. uerbo uix. dicit uix fore non uix celi. si glo. intelligit quod uix fore puenit ha bellum credo quod glo. non dicit uerum. et aut glo. intelligit quod uix fore in dicitur possit impune credo quod glo. dicit uerum. In eo autem quod glo. dicit non uix celi credo quod glo. dicit falsum. Sed ad principia et dico quod bellum ob tutelam sui puenit auiro nati. non autem auiro postremo cum ille canonico quod ha sit uerum pbatu sic nam na pductum. cuiusque tendit in uix quatuor dices se existunt dices naturalis agentis et natus in expulsiōe cuiusque quod. et pfectus quingit ha quingit p defectu unum nati agentis et sup habundantia agentis in oronum. nequaquam aut ha quingit ex intentione agentis. nalis pducit et quod am. ymo quod intentionem aut semper quod resistit quod pot. ha p se sensus. intendit p singula nalia na in elementalis que agit et patitur. adiuuat ha p. na passim resistit agentis et reagit in ipso solum ad quatuor ad fine quatuor sui et et destructio agentis in dicitur et agens corporale materiale semper agendo recipitur ut inquit pto. 3. pto et po de gen. dicit. ha puer in ipso in natis. ha in planis. na puaa ipso natura. tendit in quatuor ipso et uiam et quod expulsiōe ha in bruno. et quod non sic in rationali creatura. ha quoniam ymo. fortius. et ipso ceteris sit nobilior. et in ipso ut sine alia ordinat. ff. de ipso si in penidum puenit ergo defensi ex instanti nali. ha pbat ter. in dicit. pastoralis. et ceteris de re. iudi. ibi dicit ter. quod defensionis que aui puenit naturali. ha sentire ut glo. que est. in l. pto et qui in alie. ff. ad l. ad quod. ibi dicit glo. uix pmitit eo ipso quod pbat. ha pbat ter. in dicit pastoralis et ceteris de re. iudi. l. itaq. ff. ad l. ad quod. ibi dicit ter. ad ius pialum nalis eo defendere pmitit. Concludit quod ex ha passu quod bellum restringendo ad indicium ob tutelam corporis sui puenit ex unum nali et ipso. instinctu. si uix postremum pbat ut no pbat. ut dicit glo. in l. sciam quod qui in alie. nam aliqua puenientia instinctu non uix postremum pmitit ut puer in eternali opula. na simpliciter coheret puenit ex nali instinctu si in quodam colitus dicitur ter. et in ha uix postremum limitat et qualifcat actus puenientis. et aui nali. si in singulis actus and puenientis. nam nalis que agunt alium et pto et tunc sit canonico limitat. nam quodam alie cerno ipso pbat. mbat. Verum est quod ter postrema eam qualifcat. modum defensi. ut p in l. i. c. unde vi. et patet p mra nomina. Concludit igitur ha puenit auiro nali si approbato auiro postremo. cum nulli quod canonico. et eam qualifcato et modifcato eodem. et in ha forte saluati pto glo. que est in l. ut uix. ut sic in tellantur. et dicit glo. no uix celi ut sentire glo. quod uix diuino. no puenitur. ut in repellere. p hac op. glo. uident facere ter. na scribit luc. b. signis re pto in una mapill



ptele et et alliam. xxiij. q. i. in pn. scribit etia si quis angustiauit te, nullo passus vide-  
 am te. duo milia. Jo. vi. et q. vi. scribit etia ad romanos xij. c. no uos defendentes, si dato lau-  
 re. xps etia dixit petro uolenti eu defendere queret gladiu tuu in brachio. h. xxiij. et ha-  
 bentur. xxiij. q. i. in pn. hoc poterit mouere glo. ad tenendum q. no liceat uice poli (et  
 accid q. glo. no deat uerq. quod apud dmo strari pot. et imo sic. ille actus est licitus iure  
 diuino qui est q. omne caritatis. si defensa sui ipius est humilis. ergo. probatur. maior. nam  
 caritate potest. credendum quilibet actus lege diuina reprobus. cum ipa se no oporatur cu  
 repro. cum sit ipa fundamentu cuiuslibet liciti. plane hoc d. p. di. y. iudicatu. et. e. caritas  
 est ut michi uidetur. et fm m. an. q. radij. d. eadem. p. batur. minor. nam p. omnis actus cu  
 caritate est diligere p. omni facit se ipm. ut in an. p. omnis et. e. p. inde d. p. di. y. ergo implicat  
 dilectionem sui et sui q. uatorem si sic ergo defensam ergo uice poli licet se ipm defendere. p. circa  
 lege diuina licet se ipm defendere. amore etia q. uia uoluntate suam ergo multo fortius. t  
 iure diuino licet se ipm defendere. q. sequentia tenet p. iudicatu. q. p. p. batur. antequam  
 p. ter. xxiij. q. iij. ipa p. iudicatu. et. e. displicet. p. lex diuina inhihet que uoluntate tendere ad  
 destructionem sui ipius. ha. solum intendit et dico ha. solum intendit. nam p. ordinato tendat in  
 aliud lege diuina. a. p. batur. h. illud q. sequendo q. sequent. sequat. destructio. ha. no est inhihet  
 ut p. te quis. q. sequent. p. iudicatu. caritate affligit corpus sui nulli diuini qui affligit  
 sit corpus destructio. in no tendit in ha. finalit. si in figuram uicioru carnalium et q. sequent. p. iudicatu.  
 etia. sic etia da posset d. reuocando uoluntate p. p. iudicatu. catholicu. na ipi no intendunt  
 finalit. ad destructionem sui corpus. imo defensam fieri qua. p. uia uoluntate. exponit se motu  
 temporalis quod licet logo diuina. si se no defendere amoret. ai pot. se uoluntate ardit et in  
 destructionem sui ipius tendit. ergo lege diuina inhihet p. batur. maior. na lege diuina d. p. iudicatu.  
 reprobatur. qui sic se ipm ardent. ut diamus d. p. iudicatu. et similib. p. batur. minor. na se no  
 defendere amoret. ai pot. nec subit aliquis d. casu. antequam. nec ha. p. iudicatu. et p. iudicatu.  
 tunc sui motu appetit et p. alliu se ardit et sic p. inde ac si p. se ipm iux. regula qui p. alliu  
 ut regula qui p. alliu d. re. uice li. vi. p. lex diuina no defertur totalit. actus p. iudicatu.  
 aut. nali. si ipse modificat et reprobatur. ha. patet p. singulos d. p. iudicatu. na no p. iudicatu. in  
 habet alium et pot. no copulam. nec p. iudicatu. si ipse actus modificat et reprobatur. ex p. iudicatu.  
 reprobatur. modum approbandu. ut etia lex moralis. 2. c. h. 2. q. et. d. de filio diuina inhihet  
 totalit. defensam sui ipius cu actus ille p. iudicatu. ab instructu ne totalit. destrueret actu ne  
 quod est absurdum ut sup. p. iudicatu. lex canonica. ha. p. iudicatu. diuina no inhihet. p. batur. an  
 cedens p. e. d. re. p. o. c. olim. et. clem. p. iudicatu. q. ceter. d. re. uice. clarius p. clem. si  
 f. uice. d. hominis. Consequenter ter. na. lex canonica. p. iudicatu. legi diuine. et sic f. i. uice  
 d. iudicatu. no possunt. nam m. iudicatu. tendunt sine l. z. uice. nam. lex canonica tractat d. iudicatu.  
 monachis mandans ut staret humana q. p. iudicatu. in uice. quod etia tractat. lex aulis  
 si canonica uice. tendit. s. disponendo et p. iudicatu. ad p. iudicatu. et ne de uice. in qua tendit  
 lex diuina. et sic necesse est m. iudicatu. sine athena. om. inhihet lege diuina fore inhihet  
 lege canonica. et sic p. iudicatu. p. alliu que inhihet p. iudicatu. restat q. iudicatu. q. glo.  
 no deat uerq. cu deat uice celi no p. iudicatu. defensa sui ipius. ad auctores aut in q. iudicatu. inhihet  
 tendit. ut p. iudicatu. magis. gratiam. xxiij. q. i. s. hys in. respondetur. videt. q. iudicatu. q. iudicatu.  
 de interiori cordis p. iudicatu. no aut de interiori cordis q. iudicatu. corpore. nam interiori d.  
 humilitate cordis sic. ut p. batur. aug. in finis d. p. iudicatu. caritatis sic inq. em. p. iudicatu.  
 d. e. et. d. d. m. e. p. iudicatu. xxiij. q. i. s. Ex hys inferitur. tunc. videt. unde inq. ha. d. iudicatu.  
 ce. quo uice p. iudicatu.

¶ Amb. p[ro]p[ri]e facit hoc p[ro]p[ri]um bellum indicere.

[illegible]







**I**n baptizanti ordinanti a firmanti inungenti et singula sacramenta offerenti inuasio  
facti sit collationem illorum sacramentorum postponere inchoatam. **¶** Quarto sic posset qui  
anquam et solus de baptizante ordinante inungente etiam in singulis sacramentis an sit flagi  
illorum collationem postponere etiam si inchoauit per tutelam sui. Et in omni die ut dicitur.  
**I**n intelligenda sit mors inuasio sacerdotis cum pueri in mortis articulo per baptizantem  
an sita eterna ipsius pueri ne decedat sine baptismo. **¶** Quinto querebatur sacerdos bap  
tizans puerum qui est in mortis periculo. et inquit inuasio sacerdotis ut accidat quid periculum  
de morte an periculis collationem sacramenta ne decedat puer sine baptismo et ipse sacerdos  
accidat ut etiam intelligendum mortis periculum euadere et promittere puerum mori sine baptismo  
finitate. Sic forma quam de sacerdote differente corporis christi infirmo in extremis laboranti  
pro primo aspectu sacerdos potius debet se promittere accidere quam puerum sine baptismo mori  
nam si puer moritur sine baptismo moritur eternale ut probat Augustinus ad Petrum deus. de  
asc. di. iii. firmissime et c. regenerante eadem di. et c. nullae di. probat apostolus ad  
epistolam iii. c. per delictum unius omnes in damnationem sic originale peccatum cui effectus non est ex  
stinctus per sacramentum baptismatis inducit damnationem eternam si sacerdos solum temporaliter  
moriatur si aliter necessarius ad salutem eternam inbutus si mors temporalis postponenda est spirituali  
sic arguit Augustinus xxiii. q. iii. displicet et c. ipsa pietas ergo potius de sacerdote colligere  
mori ut puer in eternum non peccet. preterea inter duo mala minus malum est colligendum  
est minus malum ut dicitur nec in temporalibus cum similibus. at minus malum est mors temporalis  
quam eterna ut cum ipsa pietas et c. displicet xxiii. q. iii. et mors pueri est eterna ut c.  
firmissime et c. nulla et c. regenerante de questione di. iii. mors autem sacerdotis est temporalis  
ergo intelligendum propter peccatum papae actus caritatis est quod quis proximo diligit sicut se  
ipsum de pen. di. ii. proximos et c. proximi et c. caritas est ut multi uidentur. ac hic sacerdos si  
diligat salutem eternam pueri. Vnde siue temporalis non diligit ipsum sicut se ipsum et sic caritate  
careret quod probatur nam vita eterna sine comparatione precebat uitam temporalem ergo periculum  
uitae temporalem sibi Vnde etiam proximo multo magis se diligit quam proximo et sic remanet  
caritate vacuus. preterea illud intelligendum est ad cuius periculum pauiores mala secundum  
per ad mortem sacerdotis minus malum sequitur quam ad mortem pueri sine baptismo ergo per  
tentum mors sacerdotis probatur maior nam hoc est regula in moralibus quod plura mala  
etiam paribus deteriora sunt paucioribus et magis fugienda probatur in cum nec in pen. di.  
probatur minor nam si colligatur sacerdotis vita secum duo mala scilicet mors eterna pueri ut  
super adductum est et neglectus cure utique quod mortale ut in c. cum sit ars de eta et quali  
et autem periculum mors temporalis sacerdotis non sequitur nisi illud malum scilicet temporalis mors quod  
etiam attenta qualitate actus in se sine comparatione minus malum est mors pecunia ergo inferius  
ut dicitur **I**n gen. uidetur rex qui locum gentium gerendum cuius facultate se defendendi in  
cui necessitas sufficit etiam si finisus sepulchrum aliam. Confirmatur plura que dicunt  
caritate in opere a se ipso ut l. preste et c. de finit et aqua et c. peno de iur. iur. c. peni  
danna huiusmodi et pluribus eisdem est examinare causas indubitatas nam sunt causae indubitae  
in ista iussu proposita etiam si ponamus quod pueri pallii etiam laici ut mulieres baptizari posset  
est quod sacerdos diceret a sacramenti collatione non esset dubium quod sacerdos deberet periculum salutem  
suam periculum etiam de iussu pueri posset vivere usque ad expeditum periculum et hoc in similitudine  
quod non habet quoniam dubia quo minus sacerdos habet periculum salutem suam nec res in  
ducere quod habet contra hunc causam exponeremus quoniam in adulto non autem in infante qui adultus  
et non suscipiat per baptismum finis in decedat puerum habet fidem cum baptismate flammis  
adhuc non habet quoniam dubium proinde dicitur ut si periculum salutem sacerdotis in questione  
periculum in pueri de quo quod si morietur sine baptismate si sacerdos diceret. Et quod periculum in  
dubio ubi uidetur de hoc probabile dubietur. In primo casu ubi de hoc quod periculum credere periculum  
mortis sacerdotis temporalem puerum inducit et fundit per c. que habentur. Si qui si hinc etiam  
et cum non sapit aduersus et quod ibi non. quod nam ubi solus periculum querit nec ecclesia potest  
tamen eo fugiente exponit de se mortem per ipsam ut ibi. hoc maxime procedit in proprio sacer  
dote et parochiano et morientem me res super adductum inducit. Ibi autem foret dubium de probabile  
de morte ut de iura pueri usque ad expeditum periculum et quod periculum de morte periculum nisi diceret  
adhuc credere periculum quendam mortem sacerdotis cum in incerto non certo locus sit querendum  
ut l. proximo si illud per de x. ob. ubi autem probabile dubium foret hinc inde credere ut dicitur per melior  
hoc in sacramento baptismatis. In corpore autem christi fuerit etiam glo. que est in c. quod inter de peni  
et remissis que dicit dicitur non esse sacramentum necessarium tunc quod non est multum dubia si illa  
glo. non est uera proinde alia glo. non dicit in c. Remissionis de trasac. in prima glo. et illa est non  
ut non de facia non perierat super non probare ut rep. in c. omnis de peni et remissis. Tamen adhuc haec

In gen.

So. q. 95.



18. 5. 7. 100. 2. 9. 11.

An luceat mori facit elias pui her  
ablig.

**I**n baptismo qui p statuta cuiuscuqz greg impune occidi possunt licet se defendere. **I**tem  
 dicitur qd nunquid illis quos licitū est offendere, audere, impune ut rote baptizati aliter  
 quibus aliqñ d pōntē leuē municipales, q impune offendi possunt, licitū sit se defendere vñ  
 q nō. Nam si apud iustē inferat violentiā nō licet se defendere, ut l. in. ff. ad l. ad quē  
 At hic iustē inferat, q lege auctorizante, ut l. iustē de ad quē pō. Confirmat suuolentiā  
 inferatur, apud publicā psonā, nō licet se defendere. ff. de iur. l. municipal. §. i. ff. de rei ven. l.  
 qui restitueret. At hic iustē gerit iustē pphibit p. nam lex facit ipm ministrū pmitendo puato,  
 ipm pūit, et hoc pōt. lex f. dūe iurisdicciōm puato, ut l. et quia. ff. de iur. d. iud. et. l. p.  
 ne prelan. di. suad. ubi notat. q. inferat hūc nō licet se defendere. In gregi dñe q hic est  
 puato ymo et p foveret publicā psonā, apper iuste inferat violentiā dū inferat iustē ordē  
 nō puato, et sic iusticiā, ordine dñto, ut l. placit. de c. d. sen. et cap. qm. §. d. pbat. l. 10.  
 pūto ponderanda accedat leuē. nā aliqñ. lex pmitit aliquid q nullo iure pphibetur, ut xxi.  
 q. i. hac rōe. Aliqñ. lex pmitit aliquid q qstiones humanas, ut dñere olim in quibz. vñ  
 ut xxi. q. ii. quēdam. Tercio mō lex pmitit tollerando, nō quia, faciat actū illi illiatū  
 licitū p actū illiatū manēt illiatū nō pmitit ut dicit tēp. in c. deniq. in. di. nā come-  
 dentes carnes in media nocte dñice carnis plūm nō puniuntur, et dicit tēp. pmitit dñst  
 nō puniri p mulatōne et scandalū. sic al pmitit adulteriū ut dicitur, homicidiū xxxi.  
 q. siquid. uerū, et in adulteriū nō fit licitū, p. l. sic pmitente, p actū manēt illiatū,  
 pena remittit, sic in pposito si lex pmitit tollerando, et pena remittendo actū manēt illiatū  
 p odium baptizati tūc coederem baptizato, licet se defendere, nec hūc arguēdū qd dñst  
 allegata, et aut lex pmitteret posuit faciendo actū d illiatū licitū tūc pōt. (et q mō  
 pmissio notatur, p glo. in. di. ad aut lex. ff. Contra qd licet hic pualare bellū iudicē.  
**I**tem quāu dñst q quos hic pualare bellū pūit est uideridū et cetera hac q.  
 de pluribz. **I**tem licet q supiorem suū. §. i. et pmo qd in licitū sit aliam hic bellū

Disi. modi ymffor. add. 7.  
fo. 126.







¶ Pro quibz psonis liceat hoc pntillare bellum indere. Ita.

de Romme de anno no ppea qd...

9. inquit Hic claret Iam cō. f. filius p. p. r.

un. ob hoc micans manus violentas, in elementis, ut *g. suū. g. nec ille, de sen. expo.*

*¶* *In p̄lō dī tūc. al nō ut tener cōlo. indiscrete m. l. r. & b. vi. (bbi) Cynus. Aāc opy recitat t.*

innoc. q. si defendat patre matre uxore filiu ul fillam euatit iniam erit entore.  
 Innocent ipse. h. in quidem q. q. me. in. et. l. i. q. si vir. ff. ad fil. et e. ro. differens in. hunc.

quum et percedente. nā recipiuntur q̄taliū. etia sine dolo. ut est videre in iudice iuste  
endi mandante. si. di. qui in aliquo. si in excoicatore nullum canonic latu. requirit dyali

ca insigniao. vt. e. si quis suadente. r. b. q. iij. In cōcilio aut no euadit pena illi anione



in o. sic. i. car. p. d. v. q. an hanc.

etia similes mandato iuranti hoc fecer. Aut lapum de allia pona psonali ul pecuniaria Et  
tunc hango aut volentes vim repellere ab violenta passio aut sunt aucti aut ex ne i. q. aucti  
de ut alo. in l. d. d. i. p. et ut. p. cam limitand. p. l. in pnat. ff. d. uidi. et. l. lex cor.  
in p. ff. d. in iud. Aut lapum de eponeis et tunc aut illi conei erat deputati p omnia violentia  
passi. et tunc licet ut. l. item apud subcoric p. si quis virgine ff. d. iure. Aut no erat deputati  
p omnia et tunc aut uoluit ex muallo repellere et no possunt. de l. ai fundum ff. d. vi. et vi.  
de quia nec ipam ipam sic repellere possent. Et hoc de defensa p. de defensio aut uis facit  
possent ead et muallo ubi uis hoc pmitit. ut. l. no in. ff. de ap. et. l. in. d. li. ca. et. l. additoe.  
e. de ap. Et p. hoc no puto uera op. d. la. bu. quidiat q. indistincte defensam uis facit possunt  
na hoc indistincte no est uera. nam sunt casus in quib. tercio no licet actem seu auctatorem  
ponere p uera passio. tolle exempli reuillare, in pnat. de licio, sic exco solu ubi uis  
pmitit. tunc uoluit in pnatia repellere, tunc distinguere cu dno. la. Aut aduocant p  
Violentia passum et tunc licet nam licet violentia passio aduocare amicos p defensa resp. ut. l.  
in. q. cu iurur ff. d. vi. et. v. ar. ergo p defensa psonae que pponderat. ut. l. sanamus. e. de sa. san.  
eale. Aut no aduocant et tunc licet. ter. est in e. dilecto de sen. exco. l. d. p. hoc faciat. xxij. q.  
in. no inferenda. et. e. foratudo de sen. exco. quate. faciat notitia in. l. q. e. de comor. et. mer.  
et sic in hoc cecidit uera op. la. de vi. ter. est in pcedo. e. dilecto nam dicit ibi ter. et cu licet.  
cuiuslib. suo dno. ul p pmo p repellenda ipso iurura. sui imparetur auxilium.  
An quis teneat quem defendere ne accidatur. ff. Quarto q. quis uidet quendam candi  
nisi uiuet ipm an teneatur ipm uiuare. ut. q. sic p. l. necesse. ff. d. li. a. gno. Confirmatur hoc  
ex off. quod de ho. hoi. ut. l. p. uis p. de p. uis exco. hoc q. firmatur nam error cui no resp. fuit  
appropiari ut. l. xxij. di. error. et. e. p. teneat. et. e. quid est. na hanc est alia p. uis resp. ut  
metu illam aliam epcurat. ut. ff. q. me. cu. l. metu. q. si licet. Confirmat. na in qui busdam  
cib. hoc est spale p quis teneat allia sic uiuare. ff. ad fil. l. i. q. hoc aut. et. l. ult. e. n.  
exco q. uis uis de ff. d. m. uis p. l. et. l. uis singulari. ff. de l. om. glo. ter. q. uiuare teneat  
uerbo no p. reuilla culpa. ff. de uer. uis. nec ob. offm quod de ho. hoi. q. illud de sine pculo.  
fuit. l. habet. ff. de op. l. et. l. nepos pculo. p. d. illo. sign.  
Quinto q. de hys qui teneat violentia a p. uis p. uis. Et cetera hoc q. de pluribus  
An Bassalus teneatur uiuare dnm suum. Et pmo de Bassallo q. et no est dubiu q. teneatur  
uiuare dnm d. p. d. feudum. ut in d. p. l. seu. q. fuit. pa. ca. b. p. am. e. p. ma aut. ca. p. l. uis quid dnm  
et p. p. uis.  
An p. uis teneatur uiuare dnm suum. Et pmo queritur de suo (et q. teneat uiuare dnm est  
et. in. l. i. q. hoc aut. ff. ad. fil. et. l. ult. e. n.  
An quies teneat defendere p. uis belli. Et tercio querit de p. uis belli. et q. teneat uiuare  
p. uis belli si p. al caput punitur est ter. in. l. ome. dilecto. ff. de re. mil. et. l. in. q. si. ff. e.  
An Bassalus uidens dnm inuasiu ex. d. na p. t. pater ex alia. Et. Quarto q. dno Bassalus  
uidet dnm inuasiu ex. d. na p. t. pater ex alia. Vterque pater est in morbo p. uis. nisi ui  
uent. nec uiuare pot. nisi altere. que uiuabit p. uis an dnm glo. que est. xxij. q. v. de forma  
dicit q. Bassalus d. t. uiuare dnm q. p. uis p. uis. Induat q. filius t. p. uis uis nature. ff.  
Bassalus dno vinculo iuramenti. ut in d. p. l. seu. q. fuit. pa. ca. b. p. am. e. dno. et p. h. a  
foret deca q. q. teneatur uiuare dnm cui plus asseruitur. In hac q. dicit q. uis et mouet  
ex hoc na plus teneat pater ex vinculo. nali ex quo ab eo p. uis est. teneat et vinculo cui. l.  
q. sub eius potate patria. dno aut t. d. vinculo cui. l. t. ut p. d. e. d. forma. xxij. q. d.  
Et duo vincula d. uis inu. in aut d. q. san. et. d. p. l. in p. Confirmat. ut p. uis d. d. l.  
in d. na p. uis est vinculu p. uis d. uis dno. ergo pmo ipm uiuare t. ut. l. p. uis. et. l. p. uis. et. l. p. uis.  
qui d. uis. ff. qui. p. i. p. ha. Confirmatur. Juramentu p. uis dno intelligitur saluo dno  
culo p. uis nam uis alioq. quem no collit p. p. uis obligatam. ut. d. l. qui d. uis. et. l. p. uis.  
tior. Confirmatur. p. e. p. uis de uis. ut. nam uiuando dno d. ipm uiuando no intelligit  
uiuasse sic quo minus se ipm p. uis uiuet. q. dnm q. hoc p. ma caritas. ut. l. p. uis. e. d. p. uis.  
Et pater est ead p. uis cu filio. uis f. uis. ut. l. ult. cu q. uis. e. d. in p. et al. sub. exco.  
An d. uis uidens epm suu inuasiu ex. d. na p. t. pater ex alia. Vterque pater. et. e.  
Quinto q. pone clericus uidet epm suu inuasiu ex. d. na p. t. pater ex alia. Vterque pater  
et in morbo p. uis. nisi uiuentur. nec uiuare pot. nisi altere. que uiuabit epm. ut pater car  
nalem. Offen. in e. q. uis de exco. p. l. a. arguit ex illo fuit. quod ibi p. uis. q. plus asseruit  
pater. p. uis q. carnalis. p. h. a. facit. e. q. d. uis. l. uis op. uis uis p. uis. f. uis q.  
Et in hac q. d. uis. ut. e. p. uis q. d. uis. e. p. d. p. uis. na ibi dicit ter. p. uis. d. uis. e. d. uis.  
et no p. uis p. uis. ergo q. uis p. uis. Induco. e. p. uis de uis. uis. inducend. ut  
d. p. uis q. d. uis. et faciant mot. uis d. p. uis q. d. uis. et glo. in cas. p. uis. xxx. q. in.



de la' parte ytra.

མི་ཅུ་པོ་

[illegible]

*¶ An et si liceat res defendere, defendere aut cum moderamine inculpate turbe faciant ut  
multos eorum pena irregularitatis pp. si de eas qd nunquid vim vi repellente exerce-  
re possint. vim repellente acciderit, ut. multare. vim inferente eorum pena irregulari-  
tatis. Et porro ubi hoc faciat cu moderamine inculpate turbe, quia al no pderet qd et videtur  
q eorum na pdefensa psona, eorum pena illa. ut in eam si furio suo de homie. ergo pdefensa  
resp. pbatu. q sequena. na in pmitentia vim vi repellere possint, psona rebus, q utraq.*



[illegible]

**I**n prelio suo defendendo q̄ clericum excoicatum madat manus inhiacendū Tubercula.  
Quare q̄ an p̄lio suo v̄m h̄ repellendū a clerici madat excoicatum manus inhiacendū.  
Ap̄er q̄ sic p̄ can. si quis suadente. x̄v̄j. q̄. iij. et c. n̄p̄ ai iñ notans d̄ sen. exco. Confirmat  
nam madat penā irregularitatis. ut qū p̄p̄ia q̄e exco. et hanc ai ambe p̄nt penē sp̄iales  
et finalis que madat excoicatum q̄ irregularitatis ut claret. solutio p̄ced. in c. olim d̄  
refti. sp̄ialit̄. r̄et. q̄ nō madat excoicatum v̄m vi repellendū. si al. nisi manus inhiacendū  
nō possit v̄m repellere et hoc faciat ai moderamine m̄ltipac̄ m̄tele. h̄ant opp. r̄ced. uera  
ai moueri quia ut quis madat excoicatum p̄ manus inhiacendū in clericū violentiā d̄  
subesse diaboli p̄sasio. quod p̄bat r̄es. in c. si quis suadente diabolo. x̄v̄j. q̄. iij. Et si  
b̄n d̄sc̄ras p̄ura inhiacencia penā excoicatis p̄ manu inhiacendū nō inuenies q̄ man  
inhiacendū in clericū hoc cāi sit aliqua d̄ manu d̄quib̄ uera. exp̄m̄ sic puniendū. n̄a uera  
puniūt manu violentiā ut p̄cedo a. si quis suadente. x̄v̄j. q̄. x̄ et d̄ sen. exco. p̄ totū. hoc nō  
est talis. v̄mo est violentie repulsoria. puniūt temerariā ut in c. ḡangit d̄ sen. exco. hoc  
nō est talis v̄mo d̄sc̄ras. l̄ant p̄mitte. puniūt q̄ violentiā manu. ut c. n̄p̄. c. n̄. hoc est  
uera manus et p̄missa. puniūt uer̄. ut c. v̄m̄p̄t̄. ut ai mandat̄ p̄ura. et c. ai quis. c. n̄.  
h̄. v̄j. puniūt aum̄ ut d̄s c. ai quis ut ai talis h̄z suo nōie s̄m̄. puniūt negligentiā. ut c.  
quare. c. ti. h̄ie nichil d̄p̄cedo. ad allegata in q̄ruz finale est p̄ndere. ad canonē si q̄  
si quis violentie est r̄an̄sum. p̄ supradictū. ad d̄ quid d̄icitur. d̄ irregularitatis clara c̄ r̄at  
d̄fferentia nā excoicatum nemo madat sine d̄lo. irregularitatis sic d̄quo d̄ic ut nō. glo.  
in clem̄ p̄furo suo r̄ep̄m̄ allegata in p̄lt. glo.

(autres mois iurent qd  
excoient.)

[illegible]

. ၅ . ၂ နှစ် ၁၃ သွေး . ၆ . ၈၀ . ၁၆ . ၇၆ .

[illegible]

**¶ An p[re]b[itu]s de p[re]b[itu]s ul[tra] o[m]modatus liceat vim vi repellere?**  
 Respondimus q[uod] an p[re]b[itu]s de p[re]b[itu]s et o[m]modatus sibi licet vim vi repellere, et ut g[ra]t[ia] n[on] p[er] l[et]t[er]as e[ss]e d[icitu]r. vi  
 que lapidant de p[re]b[itu]s et iuste, at hec n[on] possunt p[er] o[m]modatum ul[tra] d[icitu]r. vi  
 vim vi repellere (eo. in h[uius] et similib[us] vendicat sibi locu[m] q[uod] liceat vim vi repellere, n[on] p[er] alib[us] int[er]  
 d[icitu]r vi. b[ea]t[us] rap. ap[er]t[us] de p[re]b[itu]s ul[tra] o[m]modatum, si hec sint iura. ut. l. p[ri]m[us] aut[em] que est lex  
 et in hac acta. p[er] vi. b[ea]t[us] rap. ergo multo magis i[n]d[istincte] ap[er]t[us] de p[re]b[itu]s q[uod] ad. ut. v[er]ba. Innoc[entius].  
 et aut[em] damus. p[er] de r[ati]o. ut. et l. una p[er] de p[re]b[itu]s, regula que ad agendum de r[ati]o. ut. h[uius] b[ea]t[us].  
 Et a qua i[n]t[er]t[us] tenent q[uod] argu[n]t n[on] obli. s. b[ea]t[us] vi. q[uod] si loquit[ur] in possessione n[on] tollit in quo minus  
 in alijs de p[re]b[itu]s p[er] quib[us] una de p[re]b[itu]s actus q[uod] ad. ut. e[ss]e. Et sic quoru[m] possidere  
 similit[er] largo ut implicet iustam de p[re]b[itu]s. ut. l. offi[ci]i. p[er] de r[ati]o. et n[on] in e. p[er]sona  
 b[ea]t[us] de r[ati]o p[er] p[er]sona

Quale flos for parulare bellum indicare.  
Ioca sepam pnapalit quecum. Videtur qualis sit flori dñi & repellere, et videndi.  
Quomo florum sit dñi & repellere, cum modamine culpate melle. Et huc  
Pater up q flos cu modamine culpate melle.



Quid sit moderamine inculpate tuncle et que in eo requirantur.

Et in dubiis veniuntur quod uelint hoc uerba. Hoc est illa que si illa que requiruntur ad hoc moderamen. Ceteri doctores dicunt quod sunt illa que equivalent illa violenta in qualitate actus in casu ipso. Item equivalentia in ipso actu violento, ne aliter excedendo censatur. Item dicunt et circa hoc dubitant.

¶ An liceat forti et debili cum ense se defendere contra fortem et robustum pugno in patientem.

Et primo pone fortis et robustus homo uult me percussere pugno cum sum uideris qui non possis resistere pugno. nuncquid liceat michi defendere me cum ense. Videtur quod sic quod qualitas ubi est ponderanda ut l. ult. c. de fene. et l. i. c. de fene. et l. i. c. de fene. ff. de arbi. reuocata in iudicio l. ult. m. l. i. c. de fene. In casu uero non si quis uult michi uolens subire et ego debili corpore impio ipsum pugno cum ense impio id fieret offensio corporis ad rem quod et non debet. ut l. ult. c. de fene. et l. i. c. de fene. Ja. de ar. distinguunt aut quid uult propulsare violentia illam personam aut illam rem. Jo. an. licet et cum uis et qualitasque fuerit aliter reparari non potest. ut l. si quis de ap. c. nam si robustum cadere fuerit ubi non quiescit. et si non potest michi in rebus fixatis pugnare pugnare ut l. si fixum ff. ad l. cor. de sic. multo magis licet cadere ubi persona aliter salua est non potest. Et cum quod pugnare tunc aut violentia rebus illam personam uideri reparari potest et tunc non licet qualitasque primo cum qualitate actus non aut fortis quod non debet personam percussere per defensionem. Vbi etiam aliter salua est non possit. dum non per diuina uoluntatem reparari possit et aut per diuina non potest reparari tunc licet qualitasque defendere etiam personam cadentem. ut l. si fixum ff. ad l. cor. de sic. et sic intelligitur. l. i. c. in m. et l. i. c. in m. et l. i. c. in m. ff. de ar. de ar. sic igitur intelligit moderamine inculpate tuncle.

¶ An et liceat in quantum se defendere quod intelligatur illud in quantum.

Et quod circa causam ipsam quia dicuntur rex. q. de fieri in quantum querit quod intelligatur in quantum. Aliqui dicunt fieri in quantum si fiat in ipsa fragantia facti facti fiat in illam tunc tunc de iudicio ad hoc. Alii dicunt in quantum fieri etiam si fiat postquam quod dicitur ad actus excois. ut l. qui in m. ff. de adult. Ja. et po. distinguunt aut loquuntur de violentia illam personam et tunc dicitur repelli in quantum si fiat in ipsa fragantia facti facti intelligitur. l. si quis de ap. c. aliter ff. de l. ad quod l. si quis de ap. c. aliter ff. de iust. et iur. aut loquuntur de violentia illam rem et tunc dicitur in quantum repelli etiam post fragantia facti dum non non dicitur ad actus excois. ut ff. de ar. de ar. l. qui possessione. et l. i. c. in m. et l. i. c. in m. c. n. Ratio distinctionis est non illam tunc personam non potest amplius restaurari si res ablata recuperari potest et sic non facti distinctione ad actus excois etiam si minus querat et reddat. ut recuperat dicitur in quantum ut non glo. in de. f. in m. igitur ff. de ar. de ar. sic intelligit moderamine in quantum ipsam.

¶ De equivalentia in ipso actu violento. qualiter fieri debet.

¶ Cetero quod de moderamine in quantum violento. videtur quod fieri debet de defensione non aliter ad vindictam. et hanc scribat totum hoc ponderari de ipso ad actus personam.

¶ An si uiduisset videtur non defendisse. si hostiorem meum de possessione mea expulsi et ante expulsiorem cum satisfecisse uolebat de possessione restituenda. p.

¶ Quarto quod quis expulsi me de possessione et post expulsiorem paratus est satisfecisse de restituenda si apparet cum iure non fecisse. si nichilominus ipsum expulsi. nuncquid videtur fecisse ad vindictam glo. tenet quod sic. in l. i. c. de ar. de ar. c. de ar. glo. reprobat non non debuit committere illi fragantia tunc. ff. ad reced. l. qui poterat. et l. i. c. in m. quod cum simili.

¶ An paratum ad me periculi expectare debeam. ut cum peruenire. p.

¶ Quinto quod nuncquid si uiduisset aliquem paratum ad periculi expectare me. an debeam expectare quod me peruenire an debeam peruenire. glo. in de. l. i. c. de ar. de ar. c. de ar. et determinat quod non debeam expectare. p. de ar. glo. intelligendam fieri distinctam personam nam aliqui sunt audaces et prompti ad periculi et tales non sunt expectandi aliqui timidi et tales non sunt statim perueniendi et sic modificat glo. ar. l. i. c. si quis impera. ma. dicit.

¶ An miles qui uiamus ad quendam. censetur. tunc repellere si expectet et perueniat cum aliter facere ualeat. p.

¶ Sexto quod quidam antequam miles est aggressus ab ipso suo et cadere posset fugiendo in repugnante sibi ad uiam peruenire et resistit et peruenit nuncquid censetur tunc de repellere. dicitur quod non. p. l. si quis de ap. c. qui cum aliter. ff. ad l. ad quod moderamine. tenet quod non. p. l. in eadem ff. ex qui. ma. nec ob. s. qui cum aliter quod iste non poterat cadere sine periculo fame. sic et honoris sui que non possunt peruenire reparari. ut l. i. c. in m. ff. si quis ob. c. de.

¶ In si uulneratus post uulnera insequat uulneratorem et ipsum perueniat peruenire debeat ut de l. si. ut ut culpabilis. p. Septimo queritur quidam uulneratus post uulnera insequat







muna. l. in pñiali. Istud aut remedium cōordinariū remedium hñt ex mē gentiū. nā est quēdā  
 spēs belli hñt nam hñt qd ob nūclam corpis sui anima mouere. ff. d. iust. et iur. l. d. dñm. c.  
 vñ d. l. i. d. rest. sp. c. olim. et nēdum corpis sui pñatū et indiuiduāle. ymo et mñstia  
 nam vñstias est unū corpū. cuius pñs sunt finitū de vñstias. ff. quid culp. vñstia.  
 l. i. et sic vñstias hñt est dñdñe. pñs sui corpis hñt etiā ortum aūe diuino. ut le-  
 gatur. xxi. q. ii. c. dñs nñ. hñt pñdñs omñs inferiur pñ quē inferiur istud remediū. nam  
 finitū ut iustia debiti pñtetur effm cōfessionale pñdñs remediū insigne angustia  
 qñbñatū et vñstias pñas et carentia cognitiua supñas defecto quo tñt sunt opus. hñt  
 cōordinariū remediū. ex quo inferiur. qñ etiam hñt. vñs hñt remediū sñt sñt vñdñt  
 nam nñstias nñdñt pñdñs pñdñs hñdñt est ad cñstias hñdñt defecto qñt ex tñt  
 et d. hñt et c. ex pñt qui sñt sñt lñp. pñ vñstias. l. i. cñt defecto male opñt pñt qñt  
 sic pñdñs. vñstias cñstias nñdñt qñt sñt vñstias. vñdñt. **De cñt vñstias pñt**  
**Quē sit cñ pñdñs. Quē formāle. Quē finalis. Vidēdñ est etiā de qñstias**  
 qñt cñstias cñstias.

De vñstias.

cñstias sñt pñdñs vñstias  
 lñp. **Quē mñstias.**

**De cñ efficiente sñt pñdñs vñstias.** **Quē pñt mñdñs vñstias.** (sic atēdñdñ  
**Ad pñm** quē sit cñ pñdñs. hñt est quēdñ est qñ ut dñt qñ nulla lege pñstia cñstias  
 ut cñstias dñstñt. vñstias mñdñs pñt. dñstñt. nam vñstias lñt dñstñt mñdñs qñstias  
 effm mñstias. ymo mñstias est cñstias pñt. cñstias. dñdñt. l. i. si quis mñstias. et l. cñstias. ff.  
 quid mñt. cñ. ymo etiā hñt cñstias mñstias. lñt cñstias. cñt. ut mñt qñt. pñt sñt  
 et c. vñt dñt mñt. l. i. pñstias. mñstias pñstias remediū. ad hñt sñt hñdñt vñstias. ut sñt  
 belli mñdñt. ne dñstñt mñstias. hñt aut belli mñdñt pñstias ad hñt sñt qui supñt nñ hñt  
 ut l. hñt ff. dñt. nam hñt supñt aūte pñt. nñ pñt dñstñt mñstias remediū. Ille cñstias  
 mñdñt pñt qui supñt nñ hñt et dñt. ut dñt. Ex pñt etiā pñt qñt mñdñt. nñ hñt  
 supñt. ut sñt nñstias mñstias sñt. ex quo quidā mñstias pñstias cñstias. quē nñ  
 vñstias supñt dñt. nñ pñt mñdñt mñstias hñt mñdñt. pñt dñstñt ad  
 vñstias apñt quā est pñstias mñt et cñstias mñdñt. Istud nñ cñstias vñt. ut vñstias  
 mñstias omñmodā pñstias mñstias. nam tñt pñt. tñt quid vñstias. sicut dñstñt mñ  
 hñt qñstias cñstias. ne l. pñt. qui. ff. dñt. sñt sñstias. Inferiur etiā pñstias mñ  
 cñstias ut sñstias. pñstias est pñstias. qñt pñstias aūte mñstias nñ pñstias ut pñt vñstias  
 quā tñstias mñstias. dñstñt. et hñt pñstias lñqñdñt dñt cñ. nam sñstias pñt pñt  
 pñstias mñstias mñstias pñt quē qñstias. facultas mñdñt vñstias. illi mñdñt pñt  
 vñt quibñ alio mñstias dñstñt. et hñt ut dñt qñstias pñstias nñstias sicut alñ  
 pñt nñstias dñstñt mñstias. facultas alio mñstias sñt dñstñt. ff. quē mñstias. cñ. l. aut pñstias  
 l. i. dñstñt. ff. qñ aut dñt. l. alio qñstias. Ex pñstias inferiur pñt quē mñstias mñstias  
 vñstias. nam pñstias pñstias qñstias. ex. l. hñt pñstias. ff. dñt. ex. l. l. vñt. et aut  
 loquā pñt dñstñt mñstias cñstias dñt quidā qñt actō nñt offm mñstias. nñ sñt  
 mñt gentiū. hñt facultas qñstias. quē mñt omñia pñstias. vñstias ff. dñt. mñt  
 l. i. mñt. sic dñt hñt vñstias mñstias vñstias. pñt sñstias diuina. qñt gentiū. hñt nñ  
 cñstias vñt. nam hñt facultas nñ pñt mñt sñt mñstias. nam pñt dñstñt ad vñstias  
 mñstias ordinariū. quibñ dñstñt ad hñt vñstias. et sñt qñstias dñstñt vñstias ut mñt  
 vñstias. et si ille qñt pñstias mñstias pñstias audñt pñstias et mñstias dñt  
 et sñstias pñstias quā pñstias mñstias ut nñ. Quāto sñt opñt actō ut offm. nñ pñt  
 modum pñstias formā dñstñt. ut l. ut sñstias. ff. cñ dñt. et c. l. hñt. dñstñt. cñ  
 sñstias nñ l. dñt mñt gentiū. hñt facultas pñstias mñt dñt mñstias pñstias est ex mñt  
 pñstias hñt vñstias. nam est ex mñt mñstias. ymo etiā vñstias. qñt vñstias  
 et mñstias mñt pñstias. manu mñstias ut l. qui vñstias. ff. dñt. vñt. et sic pñstias  
 est remediū mñstias effm ut ad hñt manu mñstias vñstias vñstias opñstias  
 dñstñt.

**De cñ mñstias.**  
**De cñ materiali vñstias.** **Testat examinare cñstias mñstias.** **De mñstias cñstias**  
 cñstias est mñdñt. **De mñstias mñstias.** **De mñstias cñstias** **De mñstias qñstias**  
 obiectū. **De mñstias. ex qua.** **Quid sit mñstias mñstias.** **De mñstias mñstias**  
 pñstias ut sñstias cñstias pñstias. **Quid sit mñstias cñstias.** **De mñstias cñstias**  
 cñstias quā sñstias cñstias quā sñstias. hñt qñstias. **Quid sit mñstias. qñstias**  
 cñstias qñstias sñstias est sñstias qñstias quod qñstias. et pñt cñstias ut alia vñstias.  
**Quid sit mñstias ex qua.** **De mñstias ex qua est cñstias.** **De mñstias. qñstias.**



¶ Eodem ad exanimacionem quere: quib. necesse sit suadere ueritatem. (Co. Cum necesse sit  
p. ueritatem suadere. nā. Cuius sint p. in ista corpore. i. ciuitas. ut. h. i. p. q. aut. dicit. hinc apud  
lat. est. Ciuitas. q. Cum dicitur. ut. no. in C. p. ueritatem. d. sen. exco. h. d. Et ut. d. adducit  
hanc est. cuius diffondere corpore sui. ut. l. d. d. p. d. ueritatem. et. m. et. l. d. et. h. d. et. h. p.  
cedit tam in corpore in ista q. in individuali. (Hic q. d. accipit.)

**I**n medio cessante acceduntur. Debeant quidam hic distingere an incolae debeant honora  
Et primo queritur an medio cedi et tunc cedi debeant an non debeant et tunc cedi non  
debeant. Ratio si mendici na quino sentit bonus nec amodum sentire di. ut. l. manifestissimi  
q. si ai fraudi. c. d. fuero. regula fm nam p. d. re. m. ac. regula qui sentit. li. vi. pbat  
p. l. qui sub preteris c. d. epi. et cle. et li. c. d. col. illi. li. xy. ybat. nam no habet que  
penultima dominans. nisi ut ipa ipam gesserit c. d. qul. f. nemine. li. xy. ff. d. excusat. mul  
f. et milites c. qm. c. d. testa. mul. p. l. (Hanc opp. no puto vera indistincte. vmo puto distin-

quendam sic. Aut incola nō subit p̄ eius gratiam q̄ requiritur nō uult subire, ut teneatur  
nā mē cūctate recipere q̄ ad incolam et incola tunc oritur quidam genus ultro, atq̄  
obligatorius, quo incola tenetur, subire honora, p̄ ad mu. l. i. et l. incola. et ciuitas tenet ad  
eius gratiam, ut l. illiatus, §. ne potiores, ff. de off. p̄sa. et hic cū p̄dignat adimplere  
actum ex p̄o sua nec ciuitas tenetur ipm defendere, nec ille h̄c p̄stare pot̄ ut l. uil. §. o fere  
ff. de ac. emp. Aut incola nō subit honora, q̄ sup̄ h̄c p̄ulegatus iacuitate, que h̄c honus  
remittit p̄bit ut l. si quis in q̄scentibz et de p̄u. et de ep̄. et de. ul ap̄mapo, et tū incole  
ocedi debent nam p̄ulegata q̄ssa in eoz fauorem reducere nō debent in eoz lesione. Et de  
leg. l. quod fauore. regula, quod ob gram. h. d. Et hoc intelligi q̄ de p̄ulegato, post asumptum  
¶ An ciuibz nō subitis iurisdictioni ciuitatis, et al. nō p̄aentibz factis sit iudicande in p̄esale. nō  
¶ Et q̄ an ciuibz nō subitis iurisdictioni ciuitatis, et alias nō p̄aentibz factis sine iudicanda  
in p̄esale, Quidam distinguunt an nō sine subeuntis subitis ex p̄ulegato, ut dicitur ut l. y.  
et aut p̄aemus de ep̄. et de. an p̄ dignitate seculari ut l. y. et ubi p̄na. ul cla. ff. de vacat.  
ma. p̄ eoz et mibz sunt q̄denda. An nō subeant p̄ gratiam, et tū nō dicitur p̄ma p̄na ne redi  
det in ei lesione quod in fauore iudicandi est et q̄ in ciuibz ex natiuitate p̄ficiat, obligatio in  
ipm et ciuitate que nō p̄t mutari p̄ ad munia l. sumptio, secus in incola, q̄ in incola nō  
p̄ficiat, nisi p̄ receptum ut l. i. ff. ad mun. Bino si est p̄ gratiam p̄a. ut ff. ex qm. ci. ma.  
l. si et si p̄ p̄cem §. si fidum

[illegible]



ut patet ex fco pcedenti quentem p qua effectus est amio. alterius ciuitatis. An ingit ex post amio  
pino cau no possunt qadi repfalie. p ciuitate quentem. na op q sit p corpis defendendi qe quo m  
iustiaa patur. na ad noua ciuitatem no transiit hoc mo. ff de pno. cor. l. ddi. g. p. ff. de p. l. i. p. p.  
fmo. et. l. quicunq. ff. de ac. et ob. p que inferitur. q fco cau p quentem post impiaa pmo no  
debet acci repfalie. p au pcedit pcedu. p.

prauis.

¶ An ciuit et pna pamb h amicitie repfalie qe dant. p. p. p. p. ciuitatis quo ad quid  
Quarto qe quid de ciuib et habitas p ciuib limitat m. est amio ut l. ciues e. de modis.  
spondam ciua ubi merentur spondam quentur ut l. muni ap. p. ff. ad muni. Seco  
larces caa que ad quid ut ptegan. atectoru ciuitatu ut m. pa. q. ff. et aut fieri e ne p pte  
nuquid talib repfalie sunt accedend. Quidam dicit q p hys et m hys m quib hntur pamb  
limitate sunt accedend repfalie. ut p scolari fiat militia m spectantib ad pndu et militi  
m spectantib ad militia m alio no cu m alio no repuer de corp.

fr. v. p. p.

¶ An ciuib vniu ciuitatis quipo al pnauo tractantur ut ciues alterius ciuitatis pnamio  
qadi possint repfalie. fieri po al pnauo ciues vniu ciuitatis tractari debent ut alie

¶ Quinto queritur an alterius pnao qadi debent repfalie p ciuitate m qua tractari debent  
Ad ponderanda sunt uerba pa et pnaui nam pilla uerba tractantur ut ciues no efficiuntur ciues  
ut l. appellat. ff. de ver. signi. et ibi no. et ibi p. ja. de ac. l. ita q uerba intelliguntur  
ut tractentur m hys que de iure ciu fieri debent ut l. equi fundum p. p. m. ff. p. m. p. m. ita  
pnaui quidam hanc occlusionem no accedunt uera pmo credo ipse mda debere nam pnaui q p  
illa uerba no est effectus amio fieri debentur que debent ciu. na hoc pban ag uerba agunt  
recedi no d. nec corp pnao significato ff. qui. aqu. l. p. p. p. ff. de l. m. l. no al. et l. p. p.  
et qui naut. ff. de ebo. l. ibi ergo qe dantur que ciu qe dant ut illi qe dant repfalie ut  
pnaui aduoc. est ergo nec obstat quod de q. p. acci debent que de iure ciu ppetit. na hoc reme  
dit pnaui debita forma no est amio ciu m hntur.

¶ De materia circa qua. pnaui qua qe dantur hoc est de reb et ha est claru. na m ueluo.  
¶ Estat uidere de materia mobilib. et imobilib. illor a quod qe dantur que repte sunt m  
territorio ciuitatis qe dantur. Et circa hoc queri pot de pluribus.

¶ An q res corp qui capi no possunt dicunt repfalia mda possint repfalie. p repfalie. Co. si  
¶ Et pmo an q res corp qui capi no possunt dicunt repfalia mda possint res sint p fone que  
capi no possunt p mhabilitatem impotent res etatis ul furoris ul qsimiliu tunc m cor. res  
exteri pntur repfalie ff. de iur. no. l. sane q. m aut ut. nul. mda. ff. de iur. no. l. aut m p  
exteri no possunt p quidam pnaui de amio cessam ut sunt scolares et ambaxi abes  
tuc nec caa a res corp quas differunt nectas p pndu. ul ambaxiata no pntur exteri m  
alio aut sic ut ff. de publi. l. si publicanus p hoc inferi so. alterius qois exte. ambaxi  
ator ul solari. differt scilicet res alioru numquid m eis exteri pntur repfalie tuc qno  
sunt eis nectas ut equi et similia ut l. censoria ff. de uer. signi. al. sic

¶ An repfalie simpliat iudice. exteri possint a bona existencia m territorio ciuitatis a qua st  
iudice ut mprantur et reducantur m ciuitatem territorii ciuitatis iudicantis. Tribu. d.

¶ Et q an repfalie simpliat iudice exteri possint a bona existencia m territorio ciuitatis a  
qua sunt iudice ut capiant et reducantur m territoriu ciuitatis iudicantis. Quidam dicit  
q no q ex territoriu re. ut l. ex territoriu ff. de iur. o. mda. et l. si vniu g. i. ciu. ff. de bo. auc.  
iud. pos. et. g. y. de q. p. l. dy. p. m. qe dant territoriu alterius alliciu qe dantur ca m ueris m  
multis ex q m dibo no ut qe dantur ut l. no est singularis ff. de reg. iur. hanc occlusionem no  
credo uera. na p defen occlusionem. m iudicio regu recant ad manu uerna deficiente  
formula uis pntur dicenda. et sic ubiq hoc fieri pot quia ubiq hntur est ciuibet defende  
corpue sui. ut l. de vim. ff. de iur. et uir. et l. i. o. unde vi. caa m pnaui simplia et quali  
occlusionem uerba debent opari qualiter ut pferut. ff. de l. p. p. l. i. g. qualiter caa qnqeretur re  
pnauias nihil opari ut p q ciuitate distancem ciu ciues nihil hrent nec ciues addeat  
m ciuitate iudicantis sic ergo intelliguntur ut m omem euentu aliquid opari possint ff. de l.  
p. l. i. q. ff. de re. di. l. quatenus de re. uir. l. quatenus.

¶ An p pna ciuitas iudicat repfalias a aliam pot rector ciuitatis iudicantis scribendo  
rectori ciuitatis grea quam pntur repfalias m res ibi sita atae

¶ Tertio qe an p pna ciuitas iudicat repfalias a aliam possit rector ciuitatis iudicantis  
scribendo rectori ciuitatis a qua exte repfalias m res ibi sita atae. dicit quidam q hnt m  
creantur sine hac qnqat. ut l. adiuo pio ff. de re. iud. l. i. et l. ciu. m. p. p. de bo. auc. m.  
pos. m hoc au uis est co. nam iudicio repfalias est quod dam pnaui bellu ad quod uis  
pot quis pcellere aliu nisi subditu ut m h. p. hntur. l. con. o. dno. sic dicitur no arde  
nam supponit q m pntur sine possit uidet lator sine pcellere iudice bonor caa no subditu



De azatecia circa quatuor. f.

An reprehant maior puma ciuitate. q hoies alterius. Cunctas. poci p me q melias.

vid. g. car. p. x. i. p. q.

¶ Et qd retento eodem themate. Ut puta si civitas de qua loquitur de bononia sue bononienses  
et alii insint a bononienses alii morantes. Quidam dicunt qd sic et ex quo de mutabilibus

*An respicere possint q̄ omnes, al melius aliam civitate, honora eiusdem subemere  
qui erant sunt eius alterius civitate, Roma quo, al melius h̄c h̄m̄a*

eos exire nam sibi civitas indicere, qd no subditiū multo forius qd subditiū. Confirmat  
nā ppterius pōt petere, ut usufructu suo donetur, mo utendi in omnia qd dicitur.

uis succedit in locū deficiente ueris dictōis / et cūctas in aūc suū sū pōt ueris dictōem

accensum: hic Cuius sic accendo, in dicitur, qd se ipsum hnd quod hntur  
fraudem p. non (hanc aduisione no cred uera in ditione: vmo si d. hnd

na p[er]fectum uis[us] dicto m[er]itamur, ut e[st] plures m[er]iti est. Ez d[icitu]r n[on] e[st] uis[us] dicto d[icitu]r  
 c[on]t[ra] d[icitu]r o[mn]i p[er]f[ect]o p[er]nap[er] f[er] ad l[et]t[er]as d[icitu]r. l[et]t[er]as p[er]f[ect]o, ix. q. 17. e[st] d[icitu]r p[er] m[er]itu

mediu coordinaciu. Intare m q subditi no aratibit, donec pialit q subditi pcepiti sint

Quarto qđ an in milite lencienſe, pōſſimus ut. l. i. c. d. ap. Contraxit & in  
nam in plura capi ſio poſſ. c. d. of. et. qui. ut. al. qđ. aut ſi hodie. et c. d. ex. rei. iud.

In q dierum et alios una diebus quatuor debet possint respicere / uno de iunioribus

deus. quibus. de his dicendum est ut. c. pro. de mus. h. d. **V**erum utique. in ep

An ep negligenter facere mpanā & cliaa fua cu hūc nō pōt ad fup  
est fctmatione pōssint



An q bononiense ut allice prudente bon. cuncto padua y studio exerce possint roffalo.

¶ An 9 ambasciatorum in dca possint recipere. etiam eo nō poterūt ut s. p. de legat.

An q̄ eum tē ad nū dīnas ad p̄m Jacobū. ut. al. ad allū dōm in diligēcias. Jē an q̄ nōm

¶ Nonno qđ an a Bonomenſes cūtes ad iudicias poſſint exerceri. (ter. qđ. in li. 6. d. m. d. m. s.)

ile de clero. pape. p. rom. et c. m. si quis rom. p. m. x. x. u. q. u. c. m. d. a. f. u. c. e. s. a. u. t. o. m. d.

punitū accidentis p̄missibilia (An q̄ boī. nauigantes qui di uentore differunt ad ciuit  
accidentē ceteri morerūt Et nō p̄ aut nauigra, et d̄ finit. et idem. et d̄ nauis h. l.

*Nā enā q̄ illos qui in me carere nō possunt placeat operari qui emulantur in hys.* ff d tunc no. 70.  
nō. rō. nā si ferens cōdignati nō possent capi. multo minus p̄dicto ut dicit aliterius hoc si

propter (ex quo inferunt) si bononiensis euigeter in pontem inciderit, ibi no pisset aptiney  
vigore uel saluaz. Idem a bononiense uer ad ciuitate modiolim p finis asanguinea Idem

¶ An q̄ bononiensem potatem mediolan ubi iniusticiā faciente possint gredi res salie. ka. 24

presalut. Ja & bel in aut ut nō fiant pigno. tenet q sic p. l. ff. quod quis. aut. alij disting.

possit ut si pars altera p. de ind. et p. nec magnanimo p. de iur. et nec no possint indi

fne quia ibi nō ē quāvis vō talis gressu. C d d h d macti agi opi b i et y. c d ut dō

*conferri possunt: tunc poterit media hanc se no puto uera in hac se mentis; nam respicere  
indignetur in deum: immo dicitur de deo: Quia durans effuso quiesci possunt: et i*

Acc. quissi. ut in l. q. a. d. d. r. a. et ut omis. in cui. q. mili. l. i. ad quod est quod repre-  
sentat. Nec puto uera in pmo membro. ubi dicit q. finito effio possunt in d. nā finito e

officio possunt querere eorum forma pueri, ergo non est opus ad remeare, antequam in g'ib'p  
cui d'bi p' dnam unis non possit acceri remuendum esset ad respillas, et hoc cum non est re-

Ar n̄ offialet, p̄nino, ul verens: iusticia faciens, media possint rep̄sabe,

Ja. de bel. an. q. sic. X. ly. d. an. ha. uen. ubi. o. f. al. te. q. p. p. te. in. uen. i. te. re. t. o. re. ad. f. i. a. c. i. e. n. d. u.

omnibusque non possunt a iudice nullo. Equum est et de ap. et ante officialis, nec possunt non

Quia aut sunt uniti nec separantur nec quodammodo sunt separati officialis deputatus ad meriti in

officiū qui nō uidentur equalia ut sunt non et alia et in istis me causa quales nō possunt  
india p. de ma. que. p. et id quia nō possunt refecti ut e. ut cōtra in aut. q. m. h. l. p.

Arq. quibus, per eos annos, infra, facere degenantes, inde possint repesalle. p. 174.

*[Faint handwritten text at the bottom of the page]*



india non poterunt ut h. m. p. n. f. d. mag. quo. 77 dicitur dñi ut alterius parati de quo  
in q. singulares p. sonas penitus innocentes pp. iusticia non sit india possint repulsi.

[illegible]

An q̄ hoies subdici quo ad quid um cunctari nō aut plene possint iudici, rep̄sali/  
¶ Cunctari dicitur q̄ an q̄ hoies subdici quo ad quid cunctari bonotus, nō aut plene iudici  
possint rep̄sali (eo si sine cunctari, il̄ dī multatūe simp̄ ad, sup̄er cunctari, bñ, si ex p̄o  
sint aliquis ex̄ceptus il̄ iudici dōcēs, q̄ ip̄as iudici nō poterūt q̄ nō sunt subdici que sit  
libere, si quo ad quiddam se subdicerūt et q̄ ip̄as p̄ delictū dñi hñas eas subiectus, nō m̄  
dicantur, rep̄sali, q̄ sunt libere, ut. l. nō dubio ff. de cap. si p̄ delictū dñi cunctari iudici  
poterūt rep̄sali, sicut et bellum statū fieri poterūt.

¶ Quindecimo q<sup>o</sup>. an q<sup>o</sup> certū genus hominū facere iusticia denegetur india possint reppelle.  
¶ Et dicendum q<sup>o</sup> sic quatuor prima.

**R**espondeo videtur de ea materiali coqua inquirunt reprobabile. Et ostenditur defectus iurisdictionis. Nam primo de requiriti iudicis qui si negligant nec hoc potest reuocari, ad superiorem tunc quod.

**E**t primo quod quis debet requirere indicem  
An requiri debeat index ut infra faciat an non cessante quodam? Et po. qd. quis  
debet requirere indicem ut infra faciat capax iurata passim et index recusantem  
negligentia de adue. videretur curatio pro et facere fidem de requisitorum et neglectu et  
procurat ut iterato requirat infra faciat et tunc eo negligente procurat indicem. q aut  
requiritur pro requisitorio probatur in aut. ut dicitur in d. m. p. c. l. ii.

*Sic ut m alios unustictos preget, ul arborum elligat.*

Quid iudex cogitauerit deest ut iusticia fiat. Et eo qd quod iudex requirit debeat, ut iusticia iurantis, et tunc singulis iusticia facere debet primum supponere, quo diffinitio adhibet pncipe, in aut ut dicitur in pñ. Quibz omibz et aut no negat si iusticiam facit, pñuando inq, in loci deficientis, in iudicio dñitatis. Quip et appellatur adhibere. et si no hñt iudicantē respaliē, nam est quod in pñu tñe nō pñe, defuit, omi subadio, tñ nō licet tñe appellari, nec iudicē posse iudicē respaliē, si no defuit iudicē, ex dñ pñ q si oñ grām pñe inq, pñuando tñe nō pñe potest restitui, ut l. pñe pñe. ff. de mmo. Si aut el grām illa, qui regit tñ pñ tenetur ad interesse, ut l. ne. l. pñ. ff. de dñe, qm. pñ. et sic ad interesse tñ est defuit omi subadio, ut oñ dñuati est.

[illegible]

¶ Quando dicitur non potest fieri opus superius ut sit laus. respalyo. respalyas. 20.  
¶ Cumque quod quod dicitur non potest fieri opus superius ut sit laus indicium. De non potest fieri  
de unius non de hoc. tunc est opus respalyo ut. c. dno. xxii. q. i. et l. nullus. c. de iudic.  
¶ Graue deinde fieri potest non in de hoc quod non aliter. tunc idem. Graue fieri potest de hoc non de me.



Shirley

+

निष्ठा

Et quia cui interest

Bo qrent qceptio qpetens no AF

ul' ea denegata. Co. p. acta p'm india.

ut ut ex pmo daretur, an sed per se  
p. Deponere ualuerit ut ex l. Deum

\_\_\_\_\_

Et creta hoc quere<sup>2</sup> & plurib. —

re unde si sibi remittit. Subacta  
una. Remittit unde an possit remittere



que debent ad iudicē duci. De. l. gñali. c. d. de iud. et col. p. de pace m. fr. Res aut capientia  
id aut q. qui lenitas ff. ut in pos. legat. et p. hoc nō est plus necesse ut ad iudicē nā sufficiat  
pma. accessio. In hys omib. puto penderandam formā gressione.

In res capite vigore repfaliare vendant et quali ut in soluti accipiat ut gressione  
decipiantur ut exstiment. Et dicit quidam q. iudicis ante uendunt ut l. miter. c. y.  
p. de re. iud. exstiment fieri p. iudicem. ut l. y. c. de m. d. mpe. et in q. putatōe fieri de  
ducto in pensari ff. ad. l. ful. l. in quantitate. et l. samus. q. in q. putatōe c. de m. d. l. i.  
Et in hys casu puto attendendam formā gressione. ut d.

In dieb. feriatis iudice repfaliare edicta possunt. salte exercei possunt. Et in  
Quarto queritur an dieb. feriatis iudice repre. debus feriatis p. hōum necessitate  
exercei possunt. sicut excoctōe sententiar. ut c. ult. de iudic. et aut sunt feriati ob reue.  
rentiam dei tūc dicit aliqui hoc fieri posse. metu ne amittat de pte totā gressione. Et  
pua nulli q. quos occiduntur. sunt et nō uciāt nisi dieb. feriatis. allegant. l. r. et l. y.  
ff. de fec. et l. y. c. e. t. al. nō. p. l. deo. c. d. fec. (Hanc occlusionē nō credo uerā in hoc fo.  
iudicari. ut h. d. dicitur est et hoc omia inhibentur. tpe sic feriatis. ut l. deo statū alenata  
illa lex ponit spale in ferijs iudicis. p. hōum necessitate. ut in casu illis pcedi possit  
ergo statim requirere.

Et quid. ut res capitis. vigore repfaliare uelit defendere. qualis gressione adhiberi  
Quinto q. si quis uult se defendere. ut res capitis. vigore repfaliare qualis gressione  
adhibetur. Et dicit quidam q. si fca est plena excoctio. ut q. res vendit. ut in soluti dicit  
tūc est opus ordinaria cognitio nec audietur. offm implorans. ut l. admo pio. g. si post  
additi. ff. de re. iud. et aut nō sit excoctio plene fca. si pender tūc pot. offm iudicis  
implorare. p. quod fiet edicto actus vigore quoz iudice sunt repfaliare. et pot. offm opponē  
diffecti mudo illius. cui sunt gressio. et inhabilitate p. sone. et alia de quib. sup. tactū ē  
allegant. l. y. c. d. edn. et l. y. c. ur. l. pen. et l. i. ff. de edn. (Hanc occlusionē nō credo  
uerā in hoc fo. membro. nam si sunt iudice repfaliare pte auct. de q. patentes et in iudicio.  
p. sistent. tūc dicit q. dca occlusio nō pcedit. quille excoctōe uidebant pponendē. q. n.  
apio nec opponi possunt post finem. ut l. pemptorine. c. sen. uesan. nō pos. et l. si quid  
c. de except. et c. pastoralis. c. r. c. p. Et aut iudice sunt pte p. quimada absente. ex  
ut l. si pntia. g. si pntia. ff. de dap. mfer. et l. q. sententia. c. q. uo. et q. iudex. et l. r. nō.  
et c. g. g. et c. q. uo. In pmo aut de iudice pcedere possit.

et fiet sup. hoc  
sumaria gressio.

De remedio excocti. De remedio. excocti. Et dicitur hoc de plureb. querit. Et in  
Die membro aduiguit. De remedio. excocti. Et dicitur hoc de plureb. querit. Et in  
excoctus est. an excocti pteat excoctus. q. illū p. cui debet ul. dicitur  
Et pmo querit. excoctus est. q. illū p. cui debet ul. dicitur  
illū p. cui debet iudice sunt repfaliare. p. l. nā et pmo d. ne. q. ei fuerat q. rea  
c. f. ff. de hys qui dno. ul. effu. l. p. nō. q. cū aut. alij dnt q. p. g. l. dolo. g. r. p. de re. r. q. uo.  
c. f. ff. de hys qui dno. ul. effu. l. p. nō. q. cū aut. alij dnt q. p. g. l. dolo. g. r. p. de re. r. q. uo.  
m. nā ist nō est excoctio p. illū pntia. pmo p. iudice qui iusticiā denegant. ul. mui.  
ficia fecit. dicit ergo q. aut est excoctio. iudex q. fecit iusticiā q. tūc iudicē nō facit  
ut dca. l. si quis. dolo. aut est excoctio. iudex q. fecit iusticiā q. tūc iudicē nō facit  
de quo requirebat iusticiā. ut c. de excoct. m. l. missi m. l. p. aut excoctus ē tunc.  
de quo requirebat iusticiā. ut c. de excoct. m. l. missi m. l. p. aut excoctus ē tunc.

An excoctus pntatur. f. q. uero. sicut q. debitor. pnapalem pna.  
Et pmo querit. q. an excoctus pntatur. q. rea excoctio. sicut q. debitor pnapale  
ut supra dnt est. Et pmo querit. q. an excoctus pntatur. q. rea excoctio. sicut q. debitor pnapale  
rector. tūc nō cū debitor. fiat. iusticiā denegando. q. hic ordo sit suuandus. p. dnt.  
p. de magi. que. l. r. m. p. et c. de quo. p. dnt. l. q. m. Illam pntatur. ad officialco.  
qui cū possent pntatur. rector ad iusticiā. negat. ff. de. m. et m. d. l. i. g. nūc tuer  
tunc  
An capitis vigore repfaliare possit hōies ante p. illi. cū tūc. capite in qua sunt. apd  
Certo q. an capitis vigore repfaliare possit hōies ante p. illi. cū tūc. capite in qua sunt. apd  
Certo q. an capitis vigore repfaliare possit hōies ante p. illi. cū tūc. capite in qua sunt. apd



fr. 511. 100.

(de duello. usq; ad finē.

¶ Quid sit duellum. pp. est pugna corporalis deliberata hinc inde duorum ad pugnam  
¶ Hec pmiu dico q duellum totam gloriam ul ody exagratem. Dixi pugna. hoc ponit  
ut genus. Dixi deliberata hinc inde. hoc ponitur ad differentiam pugne que fit ad ne  
cessaria defensionem sui de qua in l. ut vim. ff. de iust. et iur. et l. i. c. un. ut. et l. i. p. dim  
di. p. de vi. et vi. ar. et l. sciam. p. qui in alio. p. ad l. adul. et c. olim. i. de res. spo.  
et el. em. si furiosus. de homi. nam in pugna illa no est deliberatio ex pte adgressi ut aut  
sunt p ex pte adquecedente. im ul neutrius ut pbat in da. dem. si furiosus Inducto.  
aut est utriusq deliberatio. Dixi duorum. q tunc pte duellu incipatur adherendo utrimo  
logie uocabuli iust. de donat. p. est et aliud. l. i. q. p. p. p. r. i. d. clerico. de pben. in  
secundum. pugna duorum. ad differentiam actum qui inter duos celebratur ex mutuo pau  
sensu ut iust. de obligatoib. in l. i. p. sequentib. Et dixi corporalis ad differentiam pugne  
inductur. que fit etiam in duos ut pote accere et uen. ut l. i. in no noua p. patrum  
c. de iudi. et l. pperandum. c. a. et c. forus de vbo. si. nam ibi no querit de vbo. corpore

synonimi uocabli.



per uerbis ut uerbis sua allegatio. Dicit ad puritatem gloria ul odij exaggerationem. na per hoc tangitur finis et elicitur species duelli ut infra sequitur. Concluditur igitur descriptio duelli in genere per supra dictum.

Quot sint species duelli. Quod duellum ut dicitur sumitur generaliter. et ut terti in fine describitur species duelli elicitur. uerba posita in fine. na tres sunt species duelli. scilicet cum duellum aut per odij exaggerationem aut per gloriam in publico alicuiusdam ex duobus corporeis aut per puritatem alicuius criminis iuncti.

Qualiter duellum fit per odij exaggerationem. solo modo originali naturali et naturalitate fit. propter igitur exaggerationem fit cum aliqui gulari que apud naturales forma specifica appetit inducitur. ad se iunctum extenuandum. et de hoc duello non reperitur aliquid iure tantum per principia naturalia. hoc tenent ut statim sequatur. et quod sensuali experientia hoc est approbationem.

Qualiter duellum fit per gloriam in publico sequendum. Et et sic per gloriam in publico sequendum ut in publicis corporibus. variis modis exprimitur. et de hoc reperitur iure canonico. legem tamen. ut de hac actio. si quis in coluntate per ad. l. ad quilibet. et. l. vna. c. de glia. tol. h. xj. c. de re iudi. l. amodius. ff. de his qui. no. in. l. actore. c. de atleis. l. i. c. que res. p. ob. po. l. spe. ff. de donat. l. donat. no. glo. in. l. de hedi. que ab. inter. d. ff. interdu. legem canonice. de cle. pu. indu. h. etiam ibi fiat per puritatem. de corne. p. totu. l. non fit propter duellum si panca. tum. ut l. hac actio. si quis in coluntate per ad. l. ad quilibet.

Qualiter duellum fit per puritatem alicuius criminis iuncti. et ad probationem provocans. fit et tertia species puritatem. si alii aliquid committit alicui in potest. forte cavens alio perib. ut etiam non cavens offert se. probatur uerbis corporeis. duello suscepto. et provocatis sic se provocat. et de hoc tenent. etiam iure canonico. de pu. in duell. ut d. allegari. de pur. bul. p. totu. i. q. d. q. p. totu. illam quoniam et in lombard. ut. j. sequatur. cum illud membri deservit.

Quo iure fit promissum et quo inhibetur duellum.

Secunda tenent iudici quo iure fit introductum duellum. expedit singulas species duelli supra positas ex ordine declarando. circa singulas quo iure inducuntur. et quo inhibentur. Et primo de duello iuramento. per hodie naturalis exaggerationem. ubi sciendum quod hoc duellum in re ductum est iure naturali ut sumitur. ius naturale per instructionem nature. iuramento de sensu naturalitate. ad aliquid appetendum ut sumitur in se suo significato. ut no. glo. i. d. ius naturale. et. l. i. q. ius aut naturale. ff. de insti. i. iur. Et tunc duellum est inhiberi iure naturali ut sumitur ius naturale per instructionem nature iuramento et rationabili intelligentia. que appellatur naturale equitas. Et est tertius modus iuris naturalis. ut d. c. ius naturale. Est etiam inhiberi iure naturali iuramento precepta moralia legem divine. ut tenentur. quarto modo ut. c. statim allegante. Est etiam inhiberi hoc duellum iure positivo scilicet canonico et civili. Expedit enim singula demonstrare.

Qualiter duellum quod fit per odij exaggerationem fit introductum iure naturali sumptum per instructionem nature iuramento ex sensu naturalitate. ad aliquid appetendum.

Dicitur quod hoc duellum est introductum iure naturali. ut sumitur. per instructionem nature. iuramento ex sensu naturalitate ad aliquid appetendum. hoc sic demonstratur. quidquid est productum causa immediate. alicuius effectus. persequens. est productum illius effectus. si scilicet ius naturale originali inclinatio ad se appetendum est cum inducitur sui sensu naturalitate. appetitus. ad duellandum ergo est cum duelli. inducitur. probatur minor. na in potestatem sufficientem in eam causa productiva sic remota. in potestatem in effectum. ff. de l. cor. de sic. l. m. l. c. e. n. l. si quis uenandi. l. d. student. et. c. si quis. uidiuam de homine. de ceptis. et. c. p. d. m. probatur minor. na ex naturali dispositione prudente principis naturalis et superioris et inferioris prout in hominibus varia appetitus. inclinatio. nam circumspecto. quilibet merito vel demerito. ubi naturalis placebit. quod minus displicet et est et ex naturali dispositione que. circumspecto accidentali quocumque. diligit et odit. quilibet hoc expectari potest in se ipso. si cum huius est impetu appetitus in potestatem celestis. na si aliquis ex naturalis in momento naturalis habet uniformem. correspondentiam figuratam celestis. et principia paterna. conformem. in operationibus paulatim sunt amassum naturaliter. sic prepueritatem. hinc inde sunt. in minima summi. nam ab uniformi cum de insurgere uniformis effectus. c. ad. f. fil. l. ult. ff. ad. l. ad quilibet. l. illud. ff. de fonte. l. i. de q. p. r. a. l. a. u. et. c. in cor. poralia. de r. a. l. a. u. pecca. Et in est hoc attendendum quod hoc inimicitia. naturalis in hominem et hominem ut predam prout ex singulari naturali dispositione. que forma specifica apud naturales incipitur. nam accita naturali dispositione spiritus humane in. f. o. c. d. de amicitia per uniformem.

(for' m. a. f. a. c. a.)

(for' m. a. f. a. c. a.)



Qualis duellum quod fit per aduersionem sit inhibiti uice nali supra; utrobis  
intelligentia, et uice diuino/ Canonico/ et Cuius. Deum. Dicam enim qd hoc erat inhibiti  
testat uideor quod dicebam fo. cura hoc mendi uice nali sumptis p rationabili intelli-  
gentia, et sic uice gentium et uice nali putaretur precepta moralia leges diuine et uice cano-  
nicas et cuius. Hoc licet clarius demonstrari potest inapiendo a lege diuina (nam hoc est unum  
de preceptis decalogi: non accides, et sic lege diuina inhibiti, et hoc est expellere preceptum  
et si deinde infantia de repro, que accidet filia nec si peccant lege diuina. Iudici. v. c.  
xxij. q. iij. vniuersum. xxij. q. d. si non licet, et de banison qui multos, et se accidet, iudici  
xvi. c. xxij. q. d. si non licet non ob. qd hoc facta fuerint pro si inducit. ut scribit augustinus  
ij. li. p. de ciuitate dei. rda supreme. hoc in c. si non licet. xxij. q. d. hoc uiceur. lege diuina  
inhibiti est. nullus precepti non accides, de utero non. v. c. Est etiam inhibiti lege canonica  
de fornicia. vlu. l. distine. qd p totum. xxij. q. d. si non licet. (Est etiam inhibiti uice cuius. ff. ad  
l. cor. de sic. et c. c. p totum. Et si dicat illa uice, inhabet hominibus uoluntatem, et sic hoc  
genus duelli ex quo illud puenit. si hominibus puenies ad uelle, introducto ex nali dis-  
positione non est uoluntatem, ex quo nali est introductum. ergo illa uice non assequitur hunc  
causam. Hoc est pempta, na h nalis dispositio corporea, hoc introductum in nalis intelligentie  
dicame disponit in qm, cui obtemperandum e nam illa nalis dispositio non necessitat ymo manet  
liberum arbitrium. xxij. q. iij. de tyens. et c. nabucodonosor, et c. sicut enim de penit. d. y. et  
phis. 3. ethicor. ymo et astrologi hoc efficacie demonstrantes. hoc idem assunt, unde inquit  
etholomeus. in Genologus in udo. dromo. Na sapiens dnatue astis, sic igitur h dispositio cor-  
poris, puenit a nali principio, in nalis intelligentia manet et in qm disponit sic dici  
posset de singulis quibus diuore moralium, nam nali singuli horre, ad singula inclinatur  
diuina. De quidam supbi, quidam luxuriosi, quidam auari, et sic de singulis. nec in excusant  
qi pnt no necessitate, ut c. nabucodonosor. xxij. q. iij. hinc est quod dicit phis 3. de aia  
excusatur de motu quod me apertu sensum et intellectualem est quod repugnancia, nam  
sensuum tendit in diu, intellectualem in allum, et si intellectus ducat sensum motus est  
rationabilis et nalis sicut si spera superior moueat inferior, etiam ex fat, motus, est q  
natura ac si spera inferior moueat superior, h enim motus sensus puenit a nali inclinad.  
in diu in sic q nam nisi obtemper. sensus, intellectu ut subditus dno suo, ut idem phis  
pmo poliat. (Est etiam hoc genus duelli inhibiti uice nali ut sumit p nali intelligentia  
quod idem est, quod uice gentium. hoc pbat. sic. Nam ex nali intelligentia pedit, infirmit  
coe et nalis equitas, disponens in qsuatcm diuina et inde hinc omni uice positum ymo ut  
uice uice liquat, sunt ipa met equitas uice nalis. aliquo addito ul detracto ut. l. uice cuius.  
ff. de usi. et uice. Cum igitur hoc nalis, equitas tendat, in qsuatcm unius, ergo replet  
hois extirpationem que est tendens, ad mundi destructionem et dico de extirpatione tendens  
ad mundi destructionem nam quedam quorundam hominum extirpationes, tendit ad mundi qsuatcm  
ut puenit ad mali extirpationem, na p hoc interest rei publice, ut puniant. ut ff. de publi.  
et deen. l. latro p. ad l. de quib. l. in uulneratus inf. ff. de fideius. l. si arce de ser. et p.  
ut fame, et hys. apte qcluditur, qualis hoc genus duelli est inhibiti uice diuino/ uice  
gentium/ Canonico/ et Cuius.



**Qualiter** duellum quod fit p gloria introductu sit iure nali. sumpto p instinctu nē. ex sen-  
sualitate pueniente. **¶** Et p gloria. Victoris quod fit in publico spectaculo, quo iure intro-  
ducatur. **¶** Testatur & duellum quod duellum est et quo inhibetur. Et dicit q ha genus duelli est introductu  
iure nali ut sumit in so suo significato. s. p instinctu nē pueniente ex sensualitate. s. qd inhibetur  
iure nali sumpto p iure gentiu et iure diuino. est etia inhibetur iure canonico. cuius modi  
faciunt in ut statim substat. Declaramus singula. **¶** Dicit q erat introductu iure nali sumpto i  
so suo significato hoc pbatu. ut dicitur est. supra p pmo membro. nā sensualis inclinatio pueniens  
aproprie nali. inducit ad ex penna dñi corporaliu. solum ad gloria qsequendam ergo induc  
hoc genus duelli iud pueniens. cu pducens. cu pducit effectū. ut iurab. pñi alegas. in signori  
membro. hoc in genus duelli est minus detestabile. pmo gñe/accepto. utriusq sine. nā pñi  
genus duelli fit p eximiationē finalis capione. immutatio. naturalis manentis. hoc aut  
nō fit nectio ad eximiationē s. ducendum quod qtingere pñi sine eximiationē. ergo minus  
detestabile. cu actus hēum distinguatur. p fines intentos. p de fectis. l. uerū. et. l. qui. iū  
re pñi. l. qui. et. mēte. x. q. v. c. i. xij. q. v. quidquid. de sen. exco. cu dñtate. hō est  
quod inquit pñi. l. m. cñi. qui formatur. cu muliere. ut pecuniam mēte detrahat. nō mētia  
p auarus fit igitur sine ponderato. hoc minus detestabile illo. Confirmat pñi genus  
insuper exodo. quod in se detestabile est sine cu roabili pueniat. ut nō pñi. ut hoc genus  
duelli sine odio puenit. nam et nales amia duellabat in spectaculo ad sine glie qsequende.  
Confirmatur. illud est minus detestabile. quod minus distat a nali equitate. s. hoc pñi genus  
duelli minus distat a nali equitate. ergo. pbatu. maior. nam detestatio et apbatio actui p  
uenit. a nali equitate sup qua fundatur. inhibitoes et pñi. iure. ut l. uis. cñi  
pñi. et. mē. et. c. uis. nali. i. d. pbatu. minor. nam hoc duellu nō distat ab equitate  
iure nali. nisi q ex illo sequi possit. hōis casu qui actus tendit. in destructionē dñi  
sup qua equitate fundatur. inhibito. l. noue. cñi. ut. l. ma. c. d. gladi. l. x. Cum in  
legē uerū nō est pñi inhibito. qd se p accidentib. remuebant actōes. ut. l. hac actō. s. p  
quo in coheritate pñi ad. l. adqñ. s. pñi genus distat a nali equitate. pmo q uerū ad  
neciam aliterius ut uerū q eximiationē. distat etia in pñi. od. quod nales equitas ab  
horret. s. pñi cu in pñi. ergo detestabile. Confirmatur. illud est detestabile. quod in  
tōi naet et in nullo pñi. illo quod pñi pñi. et pñi naet. s. pñi genus. in tōi naet  
et in nullo pñi. hoc aut pñi pñi pñi. maior data. nam actus. denotantur. luidibi  
les. et dñpabiles. rē luidibilibus pñi. et pñi dñpabilitate. cu pñi in talibus  
ponderetur. ut pñi. d. cum imp. si quis in senatorio. pñi. ut. pñi. l. nō intelligit. s. si quis pala  
pñi. uide. l. cu furio suo. minor. pbatu. nam pñi genus. fit solum p eximiationē mu  
tia et hoc naet. pñi aut fit in publico spectaculo p lectionē et recreationē pñi. et hoc ab hoc  
ludi pñi. et pñi. et d. pñi. et san. et lono. pñi. n. ex pñi. l. si. l. x. et c. d.  
ex pñi. ludo. Luna est greca qñi. Et hō inferat. hoc genus. duelli introductu iure nali sup  
to. in se suo significato. et ipñi pñi minus detestabile. pmo gñe.

Act hōiū distinguunt p fines  
iure.

**Qualiter** duellum quod fit p glām inhibetur iure diuino. **¶** Ipñi inhibetur iure diuino/  
Testatur uidetur dñi quo hoc genus duelli est inhibetur. et dicitur. iure gentiu et iure pñi.  
canonico iud. et cñi. Et aut iure diuino fit inhibetur. pbatu. nam cu aliquid aliquo iure in  
hibetur inhibetur. etia omē id p quod puenit. ad illud. s. iure diuino inhibetur. homicidiū  
ad quod pñi p hoc genus duelli. ergo pbatu. maior. p. l. oratio de sponsa. pñi. pñi. l.  
cñi. lex. c. d. uisus. l. eos. in pñi. c. d. uisus. rei uidi. l. uis. m. pñi. pñi. pñi. l. si. l. x. et c. d.  
uenit. pñi. minor. l. m. s. pñi. minor. pbatu. d. uisus. c. nō uide. Et aut pñi genus  
duelli pueniat ad homicidiū licet clauus est. Confirmat. ille actus auct diuino inhibetur.  
qui est alienus a fōite caritatis. s. hoc genus duellandi est huiusmodi. ergo. pbatu. maior.  
nā caritas est fundamentū omniū dñi et exclusiua uisus. d. y. caritas est. et  
c. exo. et qñ pñi pñi pñi illius dñi. et sic alienū caritate sapit nām pñi. et  
sic inhibetur iure diuino. pbatu. minor. nam caritas est dilectio dei et pñi pñi pñi pñi  
ut. c. pñi. d. pñi. d. y. s. duellans in spectaculo. duellat. ut dñi pñi et sic nō  
diligat. ergo inhibetur iure diuino.

Cu dñet alqd. dñet a dñi  
id p qd pñi ad illud.

**Qualiter** duellu inhibetur p gloria qsequendam inhibetur iure gentiu. **¶** Est inhibetur iure  
duellam etia genti inhibetur iure gentiu. hoc sic pbatu. ille actus. genti qui est  
tendens in destructionē dñi. hoc genus duellandi est huiusmodi. ergo. maior. pbatu. nam  
equitas naturalis. sup qua fundatur iure gentiu. tendit in qñi et augmentū dñi. s. pñi.



Ad hoc autem est dispositio.

Fortitudo.

De hoc autem est dispositio.

De iust. et iure li. 1. q. 1. me nāle. et l. ex hoc iure ff. e. t. probat minor nam hoc genus duellandi tendit in destructionem et exterminationem huius qui est nobilissima res vniuersi. ymo est finis punitoris ff. de iure l. in punitum. q. inhibiti iure gentium Confirmat ille actus est inhibiti iure gentium qui est repugnans preceptis nālis equitatis que est ipm iure gentium ut ipius fundamenti hoc genus duellandi est humisimū ergo et ē. Maior probatur nā omne illud est iure gentium inhibiti cui quā est preceptum. cū q̄uor sit eadem dispositio ff. de hys qui sūt sui. ul. al. iure l. i. in p. a. a. in p. xxxij. di. hospitio. probatur minor nam hoc est iure deceptis iure gentium q. quos nō complectitur cū aliena iactura ut. l. nā hoc. ff. de adi. mēdi. et. remota complectitur de res. iure. l. d. hoc enā est iure precepti iure gentium quod nō nō iure fieri alteri nō facias ut in p. de uero ff. hoc genus duellandi repugnat utriusq. precepto Et p. pmo precepto nā duellans. querit gloriā de diuino soni et p. pmi etiam sibi fieri hoc nō est ergo inhibiti iure gentium Confirmat ille actus est inhibiti iure gentium qui est sicut belli iniusta hoc genus duellandi est humisimū ergo probat maior nā bellum iustum solum est introductū iure ut. l. ex hoc iure ff. de iust. et iure et. l. hostes ff. de cap. et post. ven. amor patet nā hoc nō est indiciū aucto p̄cipio nec p. necessitas defensam q. de hys inferitur hoc genus duellandi inhibiti iure gentium (Ex statim p̄cipio opponitur sic hoc genus duellandi sit p. experientia fortitudinis que fortitudo est virtus moralis ymo et cardinalis p. virtutes morales nec eas op̄ia sunt inhibiti iure gentium ergo nō p̄cedit statū allegati cū autē hic sint actus vere fortitudinis que est virtus moralis patet nam in hoc ḡne duellandi sit experientia et aggressio (Ex p̄cedentia huius est attendendum quod fortitudo uera que est virtus moralis et cardinalis et illa nec om̄s op̄ia sunt inhibiti iure gentium. sunt enā fortitudines similitudinarie de q. p̄p̄. m. ethy. cū autē de fortitudine que similitudinarie p̄cipiant actus adgrediendi et expectandi et sūt. v. nā aliqui adgrediuntur p. timore penarū fugientes de bello p̄mittunt Quidam adgrediuntur p. experientia aucto bellandi ut suspendari et ip̄i ut p̄ualie adgrediuntur sic faciliē fugiūt ut inquit p̄p̄. ubi p̄. Quidam adgrediuntur p̄ira nō debentantes p̄iculum Quidam adgrediuntur p. sp̄m nō cedentes subesse p̄iculum nec al. adgressus si existimaret subesse p̄iculum Quidam adgrediuntur p. gloriā mundi q. sequendum q. fortis laudari solent timidi autē vituperari. Isti sunt v. fortitudines similitudinarie de uera fortitudine que est uera virtus moralis et cardinalis existit. Ad hoc autē q. sit uera fortitudo requiruntur. hoc q. dicitur. videlz q. opetur que facit nam opus memorati nō est opus virtutis quia prudentia de resolute om̄e opus virtutis. p̄o. requirit q. eluceat Tercio requirit q. eluceat p. hoc. v. p. bonitate et honestate opus in se nō aut p. aliquid extrinsecum. Quarto requirit q. opetur firmus et delectabilis. Om̄e similitudinarie de quibz sup̄ deficiūt p̄m plus et minus. ad hoc om̄e in deficiūt in hoc q. opante simillius nō opantur p. se. v. p. bonitate et honestate opus. Sic in p̄posito ista opantes adgrediendo et expectando in hoc ḡne duelli hoc faciūt p. gloriā nō aut p. bonitate et honestate act in se nec enā sic opantur cura quod debent hoc colligunt ex hys que tractat p̄p̄. m. ethy. tractati de fortitudine. Ex p̄cedis igitur inferitur hoc genus duellandi inhibiti iure gentium ¶ Quate duellum quod sit p. q̄iam inhibiti sit iure canonico et civili ¶ Dicam hoc duelli genus inhibiti iure canonico et civili. Iure canonico est clare cum imitetur quo ad prohibitionem et p̄missione tamen leges diuine quia hoc duellum ē inhibiti ut sup̄ deductū est q. bat enā rubeli et nigri de pugnam in duell. l. ubi ponatur. clerico quia idem in om̄ibz melius p̄bat. a. de torneamentis. ubi dicitur in torneamentis dicitur facit sepultura hoc ergo clare (Ex de iure civili quale sit inhibiti hic aliquat est m̄p̄ standum q. lege ueteris ff. de iure p̄missum genus hoc duelli. p̄bat. rep. ff. ad l. ad quid. l. huc actus si quis incoluente. siue in p̄uano ubi appet cessare actum penulo om̄i cōditiōem in hoc duello ubi pugiles coluunt. l. noua edictis ubi inhibiti ut. p̄bat. rep. c. de gladi. l. una. li. xj. Quid ergo dicimus. Dicimus ne lege ueteris de correctis p. noua ut l. nō est nouū ff. de leg. hic puro attendendum q. p̄t fieri pugna. nō cruenti ubi nō tendit de sanguinis effusione ut cū aliqui brachys coluunt. ut similibz modis et hoc genus coluendi nō rep̄o inhibiti iure civili nec veteri nec nouo. ymo iure. nōc p̄mittitur hoc modis p. p̄p̄. ueritatem ut c. de spec. p. totū a. excepta. l. si lenone. li. xj. et c. de exp̄.



Indeo. p totu. e. si. pot et fieri pugna tendens ad sanguinis effusione et in cornuamentis et  
in duello ad mortem tendente et ista sine dubio iure nouo. Codras. est inhibita. ut. e. de gla.  
h. xi. et eo prohibito est tacita pbatu est ipm inhibitu iure diuino. et iure gentiu lege  
aut ueteri appet pmissum. ut l. hac actio s. si quis incoluente ff. de l. ad quib. s. ex foras  
sime instablis sic Tndia hac duellum phibitu iure gentiu si ius ciuile est alia equitas  
ab equitate iure gentiu ymo est ipa met equitas iure gentiu addens specificationem et li  
mitationem ipius. ut l. ius ciuile ff. de iusti. et iur. ergo si est inhibitu iure gentiu no potuit  
eo pmissum iure ciuili al ius ciuile repugnabit iuri gentiu In hac qno dubitau si pon  
deram uerba s. si quis incoluente et mente qua credo fuisse legis latoris de pudentia  
pondero q reperitur triplex pmissio. Quedam est pmissio simplex. que est remissio et indul  
gens penam de qua dicitur. in. di. deniq. nam ut ibi no. glo. ibi fit remissio pene no culpa  
Sa pmissio est que tollit impedimentum eius q pmitur ut dicit tex. q uidei pmititur. Rentes  
inter nos nam tollunt impedimentum impedienna ne possint fm corp uis. ficut nobiscu  
ut. ult. di. qui pma. Repitur et tertia pmissio que pmit. uiuam actu qui pmititur.  
fm quod dicitur. q colla aliq pmitit deriu. acci audice seculari pstand uiuam q  
fm possitue tradit. ut. e. cu no ad hore d. iud. et. e. ad fulfurioz. d. exi. fil. et. e. nouum.  
de der. signi. Sa pmissio addit sup pma q impedimentu tollit quod no faciebat pma ymo  
pbi pena remittebat. Tercia addit sup sam q pmit uiuam actu pmissio. quod no faciebat  
pa ymo pbi impedimenta tollebat. nunc uerba aplicando ad ppositu. si b. pndero s. si quis  
incoluente ibi tex remittit pena acciden. in coluente et sub dicitur. ro q no fit iure ca  
deu q pmissio pma pene remissoria. si nullibi repro cautu iure. q hoc duellu fit pmissu  
fa ut tertia pmissione. hoc aut no repugnat q ius gentiu inhibeat. et ciuile lex pena  
remittat. nam lex ciuile imponens. pena p homi. ad. imponit p doli et sic q hic doli.  
abest lex ciuile pena remittit. ut e inducu est. Ex hys inferitur qra hac genus duelli  
que iure inhibitu fit et quo iure pmissum.

(Triplex pmissio. vid. s. fo. iii)

Propter quid pmissum. et p quid inhibitu fit duellum. et p quid inhibitu est uidendu  
Iuxta quatuor membra quo querebatur p quid fit pmissum. de duello quod fit gra purgatio  
quo iure fit inhibitu et quo pmissum. et hoc ppre et fructu. duellum apud uulgares nu  
cupatur. Sed de q duellum est inhibitu iure diuino. et iure gentiu et ut positum. Canonico.  
indistincte. Ciuile regularet. Ex iure lombard. in ciu. pmititur. ut subdm cu illos distina

Qualiter duellum purgatoriu inhibitu fit iure diuino.

Quo iure diuino inhibitu fit hoc duellum pbatu. fit. ille actus est inhibitus iure diuino.  
p que fit de tempore. si hoc duellu est humis. ergo. pbatu. maior. p illud pceptu non  
tempus dny dei aut. pbatu. minor. nam tuc temptatur deus. cum pcuratur aliquid  
aniam quod no est pducibile. nisi miraculo diuino. sic est directe in hoc duello purgatio  
nam nale est q fornor. et ingeniosior. uiuat. minus fortem et minus ingeniosum. hoc m  
fieri pot ordine nali. si aliq minus forte et minus ingeniosus fouet. iustia per p diel  
lum querimus. ut victoria optineat. ut eius. iustia declaretur. sic igitur deus. temptatur.  
ut miraculu fuaat. Confirmat. ille actus est inhibitus iure diuino. qui est aduicemus fa  
berante dia bolo. hoc duellum est humis. ergo. probatur maior. na nul de di ad diabo  
lum. hinc ad tenebras. minor. pbatu. p e. mentiam. y. q. d. et. e. q. s. iustia. eadem di. et q  
Confirmat. illo actus. est inhibitus. iure diuino. p que innocens dampnat. hoc duellum  
humis. ergo. pbatu. maior. na deus no uult dampnari innocentem. xly. q. y. e. queritur.  
probatu. minor. p e. significat. de pur. iul. ergo.

Qualiter duellum purgatoriu inhibitu fit. iure gentiu. fit. Ille actus est inhibitus a  
Cedo dixi hoc duellum inhibitu iure gentiu. hoc pbatu iure gentiu qui repugnat nali  
capitati sup qua fundatu est ius gentiu. si duellum purgatio est humis. ergo. patet maior.  
pbatu. minor. nam dicitur equitas iure gentiu. delinquentes. puniri. insonite. absolui. at  
in hoc duello gnat qnq. m. ergo inhibitu iure gentiu. Etia repugnat. illi pcepto quod nbi  
no ius. in fin. directore.

Qualiter duellum purgatoriu inhibitu fit iure Canonico. p totu. de pugna. p totu  
dm et ipm inhibitu iure canonico. hoc claret de pur. iul. y. q. v. a Capitulo ofulista  
usq ad fine qre. Et rds possent reddi que redire sunt. ad pbandum q fit inhibitu iure di  
uino. Cum ius canonu immitet prohibitoes et pmissiones. lege diuine. Confirmat. et p  
hoc pbatu. can quare ciuile fit inhibitu. nam deus. actus. illo. est inhibitus iure positio.  
pate fit excludo obpiane iure positu. hoc duellu est humis. ergo. pbatu. maior. nam



Qualiter duellum purgatorii iure Lombard. d. 17. xx. cap. 6. pmittitur. supra notavimus.   
 Querendum est igitur quibus casibus hoc duellum pmittatur. ultra duces tenentur in l. fed.   
 etia. d. pa. te. et ei. mo. (eo. pmittitur. duellu in crimine legis ultie maiestatis. cu quis   
 alium impetit sup illo crimine. ut in lombarda. d. publicas crimin. l. si quis. et e. ultima.   
 sic po. am. d. iur. uxore asoliatu in morte viri. de in. lom. d. q. salo mortu. l. si mulier. et e. ult.   
 Sic et tertio in iniuria gaudetatoris. ut si quis aliquem uocavit qat. q. uirbitum ut. in lom.   
 d. quito. l. si quis alliu. Sic et quarto cu de homicidio omisso. iura tenequam ut. in lom.   
 d. homic. l. qui in rea tenequa. Sic quito p. homicidio q. m. in abscondo. ut in lom. d. homic.   
 l. liber homo. Sic sexto in crimine patriar. p. dicit. q. m. p. cupiditate. bono ipius. ut   
 in lom. d. patriar. l. ult. in fi. Sic septimo de fure omisso a suo. fidei negaret. suum   
 suu fuisse furtu. ut in lom. d. fure. l. si quis alliu. et fuit lex qualitasiana. p. m. quos dan.   
 Sic octavo in crimine adulteri. ut si quis asseuer. adulterat uxore alterius. ut. in lom.   
 d. adult. l. m. Sic nono. si quis dicat aliqua muliere adulterat. et sic p. bare uelit. ut   
 in lom. d. iur. mul. l. y. mapit si quis. puellam.   
 De amo   
 Sic decimo si dicitur que malo ordine posse   
 disse re mobilem sue immobilem. xxx. annis. ut in lom. d. prescript. l. si quis alliu. Sic   
 undecimo in q. uanos testes. ut in lom. d. test. l. si quis. cu altero. quid pcedit si pcedu   
 cont. ab utraq. pte. si aut ab eadem pte. no fit duellum. na aut actor. p. aut et q. d. mat   
 reus. aut nichil pbat. et absoluitur. reus. et si ab utraq. pte. p. d. canat. et certu fit   
 paria. tunc fit duellum. Sic. xij. p. debitu paternu q. filiu negante. ut. in lom. qualis q.   
 se defendat. et in qui. cas. p. pugna p. ul. fieri debeat. l. si quis. p. p. morte. Et uerit.   
 intellectus illius. l. est. q. intelligatur. debitu ex maleficio. Sic xij. si p. mandu si   
 agatur a malefactoris. ut. in lom. qualis quos. se defen. et e. l. si quis alliu. no aut fit   
 si agatur a q. soliatoris. ut in lom. d. q. salo illi. l. una in fi. Sic xij. p. adulterio. ut si



¶ ne quos minus debent duellum.

Quale dicitur purgatorium inter primarios requirit fieri debeat. Eubruſſa.

Qualiter fiat dictum.

**S**ancti iuramenti de apu me' duclantes, sit p'standum et p'que. r.

¶ Et pmo quero utri iuramenti de astu sit pstandum/ et an p uocante et uocati/ an p alio et p quem. Et iuramenti de astu in hac uindicta idem est/ quod iuramentum de calumpnia in uindicta otencioso/ fori cuius il calumpniatus. Et ut q uereq iurare debeat/ nam iuramenti de calumpnia ppubur/ in iudicio otencioso/ p actore et reu. ut. l. i. et. l. y. c. de iur. calup et aut pnapalis. c. ti. c. ti. p totu/ ergo hic asimili/ si sit eadem co et sic eadem mens dispositio/ ff. de l. aquil. l. illud c. ad l. fil. Rube. de astu. trassato ad similib/ do. hic fuerit opp. uarie/ utenit uice lombardus/ una fuit opp. et fictur/ q fuit mahianoy q in hac uindicta duellari pstatut/ sacramenti de astu/ ab utraq tam ab actore q reo/ et sic pñ eos corriguntur omnia iura loquena de sacramento de astu no pstando/ adducit quod fectur in lombardis/ qualiter quis se defendat. l. mentio. et illa lex hz quatuor intellectus unus q intelligat in rebus otencioso/ ut poane fiat duellum q puerit/ et alio q intelligatur/ in duob/ q tendit ad se possidere/ ut poane duellum q daretur/ Tercius/ q intelligatur/ in eo q que iurati est q fuerit qmiserit/ et ille uult iurare pñu/ Quartus/ q la cu duo lingat cora iudice/ et tñ iurauit de lato iuramento/ et aliter/ ult iurare/ qira/ hoc pñia regbari ut q no est ha omni uice/ ymo pñu/ ex pte rei ut solus/ actor/ iuret/ ut in lombardis/ qualiter quis se defendat. l. si quis allui asto. fallit dñi sit duellum p qñtate testu ut in lombardis. de testi. l. si et qualiter quis se defendat. l. si quis. cu allui/ dñi fuit opimo dñi haroli beneuetani/ qui uoluit distinguere an quis ueniat ad duellandum in cu ipm totum/ contingente/ aut p pñe/ alliena/ an pnapali alliena/ pario sua In pmo casu ut pore cu quis uocat/ aliquis sup fuerit ul incendio sibi pñ ul adulterio uxoris sic dñe refert aut uocand dñat cu omni



fisi. nunc dicit suspicio. q. m. f. i. o. primo cum dicitur iuratur et ita est. po. cum dicitur iuratur quoniam  
habet suspitionem et cum puocat ut suspitione debet addere. cum suspitione debet quod ipse iudicat  
sequi ad iuramentum sua. et sic de alio. tunc puocat. ad duellum in ea alibi. n. no. q. aliquid  
omissum est. si. q. alibi. ut pote cum puocat. sup. commune. l. e. m. a. p. a. n. o. sic. cu. accedat iur-  
mentum de iure sic et ut p. n. n. i. u. r. a. m. e. n. t. i. u. m. ut. e. d. e. t. e. s. t. i. u. r. o. i. u. r. a. m. e. n. t. i. u. m. d. e. t. e. s. t. i. u. r. o. e. t. a. u. s  
et e. a. i. n. u. n. c. i. u. s. i. n. s. i. m. i. l. i. b. et sic dicitur iuratur. ut iuratur. ut sic no. esse. (sic opinio. quo ad sa-  
cramenti rei repudiationem. ut sup. prima. terna. fuit opinio et forte fuisse papensium  
videtur q. ex pte rei et puocati nullum p. n. i. u. r. a. m. e. n. t. i. u. m. debet. si ex pte actoris de actoris  
placuit. in lombardis. quali. quoniam. se. d. e. p. n. i. e. l. i. q. u. o. a. s. t. o. d. e. u. o. p. l. a. n. t. n. i. a. t. e. n. s. i. u. n. e. n. t. u. e  
ad alterum duos il pugnare id fuerunt q. d. p. n. e. t. sic igitur. iuramentum p. pte rei nichil opat  
et sic ut sup. flus. respondendum. l. amplius. q. m. e. n. s. i. u. r. a. m. e. n. t. i. u. m. e. t. a. p. l. i. n. o. c. o. n. t. e. n. d. u. m. q. s. a. b. i. n. g.  
q. d. p. n. i. u. r. a. m. e. n. t. i. u. m. f. u. i. t. o. p. i. n. o. et fuit cuiusdam alibi. qui uoluit dicitur. q. actor. semp. iuratur  
p. t. e. r. q. m. a. x. i. m. e. l. e. s. t. m. a. i. e. s. t. a. t. i. o. e. c. c. l. e. s. i. a. q. u. i. p. o. et m. u. s. t. a. t. u. r. a. p. r. e. d. i. c. t. u. m. i. n. r. e. o. a. c. c. i. d. i. t. a. u. m  
alibi. p. t. e. r. q. a. i. p. a. p. e. n. s. i. b. u. s. et sic credi in actoris n. o. i. n. q. u. e. g. u. l. a. r. i. t. p. t. e. r. p. r. i. n. c. i. p. i. u. s. i. n. a. i. b. u. s.  
de quib. supra. et est eo ut p. q. u. e. l. l. a. t. u. r. t. e. n. s. i. u. s. p. u. n. i. u. r. e. n. o. p. r. e. d. i. c. t. u. r. a. l. l. i. q. u. o. i. n. d. i. c. t. o. q. e. n.  
p. n. o. u. o. l. l. i. t. i. u. r. a. a. d. m. i. n. u. s. p. a. d. e. r. e. i. n. f. a. m. i. a. et d. i. f. f. i. c. i. e. n. d. u. m. p. l. a. t. o. n. i. e. x. p. o. n. i. t. p. u. e. q. u. i. n. d. e.  
p. u. r. e. a. p. u. o. l. u. i. q. q. i. n. p. r. o. t. i. i. d. e. a. c. c. i. d. i. t. q. u. a. l. i. q. u. o. e. t. i. b. n. o. e. i. c. igitur. u. n. e. l. o. m. b. a. r. d. i. q. u. o  
duellum p. n. i. u. r. a. m. e. n. t. i. u. m. i. n. a. i. b. i. s. s. u. p. e. n. u. m. e. r. a. t. i. o. a. d. m. i. n. u. s. e. x. p. t. e. a. c. t. o. r. i. s. p. r. e. d. i. c. t. u. r. i. u. r. a. m. e. n. t. i. u. m  
et iuramenti d. e. r. o. p. o. r. t. e. p. u. o. c. a. t. i. o. d. e. p. u. o. c. a. t. i. o. d. e. r. e. i. e. p. i. s. t. e. n. t. i. a. s. i. c. i. u. r. e. t. s. i. d. e. s. u. s. p. i. c. i. o. s. i. c.  
e. n. a. i. u. r. e. t. d. e. e. n. a. d. i. f. f. e. r. e. n. t. i. a. n. o. t. a. t. i. m. i. u. r. a. m. e. n. t. i. a. i. n. s. u. p. p. o. n. e. et d. e. r. i. t. a. t. i. o. u. t. d. i. n. i. d. e. c. e. d. i. t. i. l.  
i. a. c. e. a. l. l. u. d. d. e. u. e. r. i. t. a. t. e. u. t. d. i. c. i. t. d. i. s. c. a. r. o. l. u. s. i. n. r. e. o. a. l. i. i. n. o. q. u. i. p. r. o. r. a. m. n. e. c. e. s. s. i. t. a. t. i. o. i. u. r. a.  
m. e. n. t. i. u. m.

¶ In d. ne parti dato campione, in casib. ante p. m. i. s. s. i. o. n. e. l. i. c. e. t. s. i. c. a. l. i. e. r. i. p. e. t. d. i. c. i. t. a. m. p. i. o. n. e.  
¶ Et quero n. u. q. u. i. d. s. a. l. i. a. n. p. a. n. d. i. t. u. r. a. m. p. i. o. i. n. c. a. s. i. b. p. r. i. m. i. s. s. i. o. n. e. a. i. u. r. e. l. o. m. b. a. r. d. i. q. u. i. s. u. e. d. i. n.  
u. e. e. n. i. p. n. o. t. a. n. i. a. n. u. n. c. l. i. c. e. a. t. a. l. i. e. r. i. p. r. i. d. i. c. i. t. a. m. p. i. o. n. e. (s. o. h. i. c. f. i. c. i. u. r. o. p. i. n. o. m. o. n. e. s. d. a. n. t. a. l. i. q. u. i.  
d. i. c. i. t. q. s. i. c. a. l. l. e. g. a. n. t. q. u. o. d. h. e. n. i. u. r. i. n. l. o. m. q. u. a. l. i. e. q. u. o. s. e. d. e. p. n. i. e. l. i. q. u. o. d. i. q. u. i. f. u. l. l. i. t. i. n. c. a. s. i. u. b. i. f. u. i.  
o. t. e. n. d. i. t. q. d. i. n. i. c. a. s. i. n. t. o. p. i. n. o. q. a. l. i. e. r. i. p. r. i. n. o. l. i. c. e. a. t. u. n. c. e. t. e. s. t. e. o. n. a. m. l. e. x. t. u. e. i. n. r. e. b. u. s.  
c. a. s. i. b. p. r. i. m. i. t. u. r. e. x. p. o. d. e. n. t. a. t. i. n. a. l. l. i. q. u. o. u. t. s. i. d. e. l. e. g. i. s. l. i. u. o. s. i. n. g. u. l. a. r. e. s. s. i. d. e. m. u. n. i. c. i. p. i. s. s. i. f. o.  
m. a. l. i. f. i. a. i. d. i. c. i. t. e. d. e. p. a. r. i. s. l. i. m. a. r. i. n. o. d. e. a. s. s. i. s. t. u. r. p. r. e. l. a. t. o. r. i. s. l. i. n. t. c. o. r. p. a. l. i. a. c. u. s. i. m. i. l. i. b. E. g. o.  
c. r. e. d. i. t. h. i. c. p. o. n. d. e. r. a. n. d. u. m. q. i. n. h. a. r. r. e. f. e. r. t. h. a. i. n. d. i. c. i. t. d. u. e. l. l. i. a. u. d. i. t. i. o. q. u. e. n. t. i. o. s. o. n. a. m. i. n. u. d. i. c. t. u. o.  
o. t. e. n. t. i. o. s. o. r. e. g. u. l. a. r. i. t. q. u. o. s. p. a. l. l. i. u. d. i. n. q. u. e. t. e. t. p. h. a. i. n. u. d. i. c. t. u. s. q. u. i. p. r. e. u. a. t. o. r. e. s. i. u. s. u. t. s. i. d. e. p. r. i. u. e.  
s. i. e. t. l. i. s. i. s. i. o. s. i. n. d. u. e. l. l. o. r. e. g. u. l. a. r. i. t. s. o. l. i. p. s. e. t. i. n. h. a. r. e. q. u. i. p. a. r. i. u. r. i. n. d. i. c. t. o. c. e. r. m. i. n. a. l. i. i. n. q. u. o. r. u.  
n. o. i. n. t. e. r. u. e. n. i. t. p. r. e. u. a. t. o. r. a. d. i. c. i. o. t. a. e. a. l. l. e. g. a. n. d. a. s. s. i. d. e. p. u. b. l. i. c. i. u. d. i. c. i. p. q. u. i. a. d. c. e. r. m. i. n. e. e. t. l. i. p. u. n. i.  
q. u. o. q. u. i. p. u. b. l. i. c. i. s. s. i. d. e. p. a. r. i. e. t. e. a. l. i. e. t. e. d. e. n. i. e. n. s. i. d. e. a. c. u. s. a. t. e. t. e. s. t. e. o. q. u. i. n. p. s. o. n. a. p. r. e. u. a. t. o. r. i. s.  
n. o. p. o. t. f. e. r. e. i. s. i. d. a. d. e. p. n. a. t. o. r. i. a. q. u. i. i. m. a. c. t. u. s. i. n. p. s. o. n. a. d. i. n. i. n. o. q. u. i. a. l. s. e. n. s. s. i. d. e. p. e. n. s. i. o. l. i. a. b.  
s. e. n. t. i. e. n. t. s. i. c. d. i. c. t. o. i. n. d. u. e. l. l. o. n. a. m. i. n. d. u. e. l. l. o. d. u. e. l. l. a. n. t. e. s. a. d. p. r. a. t. i. o. n. e. m. p. s. o. n. a. s. c. o. n. d. u. c. i. t. u. t. e. x. p. l. i. c.  
e. l. l. i. c. i. d. a. n. t. u. r. d. i. c. i. t. u. s. p. h. a. r. g. e. n. u. s. p. l. a. t. i. o. n. e. s. i. c. r. e. g. u. l. a. r. i. t. n. o. i. n. t. e. n. i. t. a. m. p. i. o. p. r. e. t. q. i. n.  
c. a. s. i. b. p. r. i. m. i. s. s. i. o. n. e. i. g. i. t. u. r. e. m. e. r. g. a. t. c. a. u. s. d. a. n. d. i. a. m. p. i. o. n. e. s. e. p. p. r. e. u. n. i. u. s. e. t. n. o. e. m. e. r. g. a. t. e. p.  
p. r. e. a. l. i. e. r. u. s. i. l. l. e. s. o. l. u. s. d. i. c. i. t. a. m. p. i. o. n. e. t. u. a. n. c. u. e. r. i. q. u. i. e. m. e. r. g. a. t. c. a. u. s. d. i. c. i. t. q. u. i. d. a. b. i. t. i. n. f. i. d. i. c. a. e.  
p. e. q. u. a. l. i. t. a. t. e. s. i. n. c. i. n. d. e. p. u. a. n. d. a. m. d. i. l. i. c. i. t. a. t. u. n. i. d. e. t. a. l. i. e. r. i. u. t. l. i. t. e. r. m. i. n. a. t. o. e. d. e. f. e. u. t. e. t. h. i.  
e. t. d. e. m. u. n. i. u. s. p. r. e. t. e. t. p. r. o. t. i. i. n. i. r. e. q. u. i. l. a. n. o. l. i. c. e. t. d. e. r. e. g. u. l. a. t. i. o. n. e. l. i. q. u. o. d. e. t. h. a. r. s. a. p. i. e. e. q. u. i. t. a. t. e.  
s. i. p. r. o. t. i. i. n. i. u. r. e. n. o. d. e. u. i. g. i. r. e. i. u. r. o.

¶ Qualiter in casib. hinc inde cu. q. d. i. c. i. t. u. r. a. m. p. i. o. s. i. c. i. p. o. r. a. t. i. o. n. e. e. t. q. u. e. s. s. i. o. d. e. h. i. c. p. o. n. d. e. r. e.  
¶ Tercio quero. qualiter in casib. hinc inde cu. q. d. i. c. i. t. u. r. a. m. p. i. o. s. i. c. i. p. o. r. a. t. i. o. n. e. e. t. q. u. e. s. s. i. o. d. e. h. i. c. p. o. n. d. e. r. e.  
h. i. c. p. o. n. d. e. r. e. q. s. i. c. u. t. i. n. f. e. r. o. q. u. e. n. t. i. o. s. o. i. n. p. o. r. a. t. u. r. s. i. c. p. a. m. p. i. o. n. e. s. i. n. i. n. d. i. c. t. o. d. u. e. l. l. a. n. t. e. r. e.  
s. i. c. i. n. f. e. r. o. q. s. i. c. u. t. i. n. i. n. d. i. c. t. o. q. u. e. n. t. i. o. s. o. s. i. c. i. p. o. r. a. t. u. r. d. e. e. q. u. a. d. u. o. c. a. t. o. r. e. d. i. s. t. r. i. b. u. t. i. o. n. e. u. t. l. i. p. u. d. e. n. d. u. m.  
e. d. e. p. o. s. i. t. u. l. s. i. c. u. b. h. i. n. c. i. n. d. e. s. i. c. a. m. p. i. o. n. i. u. q. u. e. s. s. i. o. d. e. f. e. r. i. i. p. o. r. e. e. q. u. a. d. u. o. c. a. t. o. r. e. d. i. s. t. r. i. b. u. t. i. o. n. e. i. n. p. r. a. p. i. e.  
s. i. b. i. a. u. t. d. u. e. l. l. a. n. t. i. b. n. o. e. s. t. p. o. n. d. e. r. a. n. d. u. m. e. q. u. a. l. i. t. a. t. e. u. l. i. m. e. q. u. a. d. u. o. c. a. t. o. r. e. s. i. n. c. i. n. d. e. p. r. a. p. i. e.  
u. i. r. i. b. c. o. r. p. o. r. e. s. p. o. n. t. e. a. d. p. r. i. u. m. p. r. o. d. u. c. i. t.

¶ In quilibet admittatur p. campione. ¶ p. campione. s. i. c. u. t. d. i. n. i. e. s. t. h. i. c. e. q. u. i. p. a. r. i. u. r. a. m. p. i. o. n. e.  
¶ Quarto quero in quilibet admittatur. p. r. o. a. d. u. o. c. a. t. o. s. i. c. u. t. i. q. u. i. t. u. r. q. u. i. l. i. b. i. a. d. m. i. t. t. a. t. a. d. p. r. o.  
s. u. l. a. n. d. u. m. n. i. s. i. s. i. c. p. l. u. b. i. t. u. s. u. t. l. i. s. s. i. d. e. p. o. s. i. t. u. l. s. i. c. q. u. i. l. i. b. e. t. a. d. m. i. t. t. a. t. u. r. a. d. o. f. f. i. c. i. u. m. a. m. p. i. o. n. e. s.  
n. i. s. i. r. e. p. e. l. l. a. t. u. r. a. u. t. e. r. e. p. e. l. l. i. c. a. u. t. f. u. e. u. t. i. n. l. o. m. q. u. a. l. i. e. q. u. o. s. e. d. e. p. n. i. e. l. i. q. u. o. d. i. s. i. c. i. t. a. m. p. i. o. n. e. e. t. e.  
u. i. r. o. q. i. n. f. i. r. m. u. s. s. i. d. e. f. u. i. t. l. i. n. o. p. o. t. e. t. s. i. s. u. b. a. u. m. b. i. t. p. r. i. m. i. t. u. r. i. c. a. p. p. r. e. y. d. e. l. i. c. i. t. s. u. b. s. i. b. i. b. e. r. e.



sic et alij criminofos grauib. criminib. inuenti voc praedicti. ¶ Inuicellatit fit duellu. Racha.  
 ¶ Quidit quero in an ellatit fit duellum. eo. regularit in ellatit actiois. ficut diamus in iudi.  
 tis gremiofo. hoc hene in lom. quali quis fe defen. l. fiquis amod. fultit in crimine left. ma.  
 repatit. ubi ex neceffitate cogitur. duellatit. et fi aliquis dicit auxam. ut in lom. depublias.  
 criminib. l. fi. et in lom. d. tunc. mul. l. y. ¶ Qualiter ordinet duellum Rca.

¶ De isto quere qualiter ordinari debeat duellum eo. iure nō est cauti. / 3. q. si iudicandine, obsequat  
g. elligunt. locus pūis amplius in ciuitate ul. eo. quilocus. autē oren claudat cordis. ita.  
ut nullo bapno nullus audeat intrare. nisi duellantes. nec audeat tumultū facere p. que  
altera p. offendi posset. et iudex erit ibi in loco. ut uidere possit utriusq. duellantū. et qua  
lit. unus aliū recipiat. ut finalit. iudicet in duello. atq. quis subabuit.

[illegible]

¶ In facma seu fustes unus duellantis, franguntur, ul cadunt, Debeat alia dari.  
Secundo querit quid facma seu fustes unus duellantis, franguntur, ul cadunt an debeat  
alia dari, Et ut q sic nam dicit top. q pugna d. fieri cu fustib, et scutis, ut in lom. quali  
quis se defen. l. mentio, et in lom. de testi. l. p. quos oi a testis, s. nisi alia dicerent, no fieret cum  
fustib, ergo. Confirmat, nam fustes, in duello equipantur, testib, et mstris in iudicio qntitio, s.  
in foro qntio s. sic multiplicans pducit testib, et mstris ead. si aliquos da franguntur  
an publicitatem et no neci dicitur ut in aut. de testi. l. p. s. no. de testi. frater matris, et cler. testib.  
c. a. Caudum d. tenet instancentes suos, si cadunt, qz tuc d. imputari fortune sue, alij  
dicit q in nullo cau sunt pstandi, s. imputari d. fortune sue, alij dicit s. i. q. s. uetudim sup  
hoc. Ergo accid. opp. s. i. m. p. ut uet. s. q. no sint alia pstandi, sine cadunt sine frangunt,  
nisi aliud hat q. uetudim, que opari pot. effm, ut lex. ff. de leg. l. de quib, C. que sit bon. q. s.  
l. q. xi. di. q. uetudim, i. di. q. succedd. Et est res nam in duello, ut dicit, in principio tractat  
querimus, aliq. quid q. nam, ut q. minus, forte, et q. minus in iusticio s. uincit fortior, et  
magis indutiosum quod aliq. q. tinge cau moradente, ergo uterq. duellantu dimittend.  
est subiecti animi quib, se libere exposuerunt al. transiret, na duelli ad purgationem iudici  
Confirmatur, nam p. diceremus dari nona arma, ubi cadunt sic a simili diceremus duel  
lantem cadent subleuari quod est abs. dim. nam pp. hoc casu aliq. q. tinge, potentiam sub  
iubere, et in ha. demo. stratur, induit dimittit.

¶ **Q**uod duellanti pmo pcutere debeat. Ita. Et uidetur q pucane, nā hīc uidetū du-  
Nono quero quos in duello, pūo pcutere debeat. ellare est simile, uiditio, q̄tentofo ut sup̄  
tactu est: sepue, si mudino q̄tentofo acce: pmo porrigit libellum res et postea vōus responder  
ut in aut offere. c. d. hē q̄. et. c. i. d. h. ob. exio afimili pucane, pmo pcutet puocati. In  
dūū nē. vōus puorabilior: ep̄. ut l. arianus. ff. d. acc. 70b. et regula puorabiliores, ff. d.  
res. nē. regula in pmo: c. i. h. d. 60. credo pma p̄t uerā: nec ob. allegoria in q̄m, q̄ illa  
mra laurur in finis uiditioz cu nō restat nisi diffinitua p̄mā q̄ tūc puendi est res: p̄tā  
p̄nopia: puendum est acceri. ut. l. si quis intente ambigua. ff. d. iudic. et l. mē sup̄ c. i. ff. d.  
uer. ob. Sol. dīa p̄sser q̄ hīc nō est puandus ord: si laus. est p̄ntēti ul cōtā q̄ausus.  
¶ **I**n duellum pma die nō committim. sequen die possit cōmitti.

Et dico q. sic. Dico eni. donec inf. p. n. a. i. n. s. t. a. u. r. a. n. d. u. m. e. s. t.

¶ An subambens in duello depnetur in expensis.  
 Undecimo querit aliquis subambens in duello, debeat in expensis depnari aduersario, eo ad  
 similitudine iudicij accepti, quo victus victori depnatur in expensis, ut l. pperandum, c. fin  
 aut. c. de iudicio, et l. terminato, c. de fidei. et l. q. et c. sine dolo. et q. et c. alligata. et  
 peno, posset sic in duello dici, victus victori et, c.

**¶** An puocant in duello subambens. punitur: pena: talionis. Talionis. Talionis. am. eo. ad  
 quoddam quere an puocans in duello subambens. punitur: pena. similitudine iudicij  
 criminalis. qrenasij ubi imponitur pena talionis. acasari subambens. ut. c. sup. hys. d. ac.  
 et. c. licet. c. b. et. f. si. c. d. acasari. sic in duello ai duellatur. p. crime punitur dum ad publica  
 iudicia. ¶ An puocans ad duellum p. crime subambens. q. d. p. natis. possit d. eodem ci  
 mine. in iudicio qrenasij acasari. ad duellum p. crime subambens. et d. p. natis possit

¶ Tercio diano quero an pñatue de eodem crimine accusari in iudicio gentio so. eo pñet da q cu mre cum dictis purgatorum nō appēdētur, imo penitus reprobetur. ut f. pñā. c. d. pñā.







**P**actatus iste de bello pma sui diuisione  
diuidit in tres ptes pnapales. Quarz  
ultima in sex tractatus diuidit et sub  
diuidit pnt ubi p tabulam istam clarius  
in fin demonstrabit. rubricellis suis suo ordine  
collocatis.

**P**rima pars pnapalis.

Quid sit bellum et qualiter describat.

Secunda pars pnapalis.

De diuisione belli et qualiter diuidat.

**T**ercia et ultima pars pnapalis pnt  
ordine tractatum et diuiditur in sex  
pnapales tractatus.

Primus tractatus.

De spiritali bello celesti.

Qualiter spiritalis bellum celeste est me  
ritum et mensura spiritalis humani belli.

De naturali deductio spiritalis belli corporis ce  
lestium ad bella terrestria.

Qualiter pnt philosophi et astrologos et nales  
philosophos necesse sit dicere bellum.

Secundus tractatus.

De spiritali humano bello pnt theologia.

De spiritali humano bello pnt moralis philosophiam.

**T**ercius tractatus. s. De vniuersali corporali  
bello et iste diuidit in sex tractatus.

**P**rimus tractatus. s. quo iure introduci fit.

Qualiter iure diuino ortu fuit bellum  
vniuersale corporale.

Qualiter iure gentium ortu fuit bellum  
vniuersale corporale.

**S**ecundus tractatus. s. de pnapali.

quibus licet bellum inducere vniuersale.

**Q**uibus pnt et pnapali et quo iure et o  
quos bellum inducere licet vniuersale.

**A**n bellum motu p impatore q ecclesiam sit  
iustum et an teneatur subditi in hoc optem  
perire.

**Q**uid eiq iure sit cu papa. s. mouet bel  
lum o impatore.

**T**ercius tractatus. s. de pnapali. s.  
que fuit aggregata bellum.

De legione et cohorte et qui et quot nro  
in eo requirantur.

Qualiter milites se hnt debeant in bello.

Et an obediant et agant absque pceptu.

Que pnteneant ad officiu dno belli.

Qualiter varie puniuntur milites puebanis  
et iniquis.

De fortitudine et ipse nra. et que for  
tudo dicat moralis et que no. Et que bellu  
duas ad finem rectu et que no.

**A**n fortitudo sit virtus cardinalis.

Vnde et qualiter quatuor pnapales vir  
tutes dicantur cardinales morales.

**Q**uid sit virtus.

De triplici spe boni et qualiter quatuor car  
dinales virtutes dicantur a bono.

**Q**uid et qualiter in bello que possit dici  
fortis.

**Q**uid sit pnapalior actus fortitudinis.

Quot quibus fortitudinis go uat in bello.

**A**n fortis in bello prius debeat moriet  
expectare q fugere.

**A**n miles vna cu Comitibus sua uerit  
in hostes prumpens et ipse totusit qsem  
gens o mandatum duat sit capite pntend.

**A**n dui belli capto ad hostes sit uenia qre  
dendi.

**Q**uatuor tractatus. s. de pnapali. et  
diuidit in duas sui pnapales ptes.

**P**rima pars. s. qui teneantur ad bellum  
accedere.

(q teneant ad bellu accede.)

**A**n adno moto iusto bello teneatur uas  
fali ad bellum accedere pntis expensis.

**A**n subditi vni baroni mouenti quicunq  
ocui regem suu teneatur iuuare ipm ba  
ronem qtra regem.

**A**n subditi vni baroni mouenti quicunq  
alteri baroni teneat ipm pmo ul regem  
mouentem guerra alteri regis iuuare dtri  
usq mandau dno qausu recepto.

**A**n vassallus nonlegimus duos dnoz utriusq  
ul alteri et que iuuare teneatur.

**A**n vassallus teneat iuuare dnm q pater  
ul pater oia filium.

**A**n Cuius duarz ciuitatu teneat iuuare  
unam q aliam.

**A**n vassallus uocatus adno teneat ipm  
sequi in partibz dnamarime ad pugnandum  
ocra barbaros.

**A**n fmi teneant ubiq sequi dnm ad bellu.

**A**n libera uocati teneat seg pzonu ad bellu.

**A**n agricoltis uocati teneant sequi dnm ad bellu.

**A**n qfederatos seu obligatos possit dno  
prouocare ut ipm uiuet in bello.

**A**n subditi vni iurisdicoris tm teneantur  
ad bellum accedere.

**S**ecunda pars. s. de psonis no asserens ad  
bellum libere accedentibus et diuiditur  
in d. pnapales ptes.

**P**rima pars. s. de libere accedentibus.

(de libe accedentibz ad bellu.)

**A**n libere accedentes obligent sibi illum  
in cui finem uadunt pda pnti ind panti.

**A**n comodarius teneat qmodum esse  
et arma in bello depda resarcire.

**A**n qducator teneatur latoru equos et arma  
in bello depda resarcire.

**A**n pntane o spoliatores puocati ad bellu  
accedentes ager in locu iurpato ul furti.



**I**n no vana si pro motu accedentes ad bellum obligent sibi illum in cui finem vadit  
**I**n no vana si pro motu ad bellum accedentes et valuerit p facientes obligent sibi illum remittentem et q dicentes in cui finem vadit

**S**ecunda pars de accedentibus quia tenentur ad annuendum

**I**n talis agat q illum que iurat

**T**ercia pars de accedentibus p aliam q sequitur

**I**n tales obligent sibi illum in cui finem vadit

**Q**uarta pars de accedentibus quia laici opus suas

**I**n talis agant q ducentur

**Q**uinta pars de accedentibus no spoliandi

**I**n talibus actio q perit

**E**sta pars

**I**n clerici ad bellum accedere possint

**I**n stipendiarij in allamania q situro salaris p qducentur agant q cu qui dum veniunt amittit totum statum suum

**I**n stipendiarij a supri d allamania p c aliam pntiam q situro salario p annum qui dum veniunt civitas violente occupata e p tyranni agant ad salarii in totum aut partem ul ad quid

**I**n qn solui debeat stipendiarij an sim pnapio annuatis mensis an in fine

**I**n stipendiarij se absentantur etia d licentia dno aliquo tpe pnt salarium p illo tpe

**I**n stipendiarij culpa sua pnt nonint totu tpe pnt sibi pnt stipendium totu tpe an in p tpe quo no fuerint

**I**n stipendiarij pnt stipendium pnt pnt

**I**n stipendiarij pnt stipendium tpe quo infirmatur

**Q**uinta tractatus terti pnapalis f d spoliis et captivis que fiunt in bello

**I**n aliquid capiens in bello efficiatur dno pnt capere et rei or an sit laicus pnt

**I**n capti in bello dno civitatu efficiatur fin et dnum eoz querantur

**I**n capti in bello efficiantur capientiu

**I**n in bellis licitum sit insidius uti

**I**n qserant in bello totu suu interesse possit uti ad insidius in iudicio querantur ul bellum iudicio q cum iudicet

**I**n morientes in bello saluent

**I**n pnt et possessionibz ecclie corporali bello bellare licet et sup hoc milites quocumq

**I**n licent epie ad bellum accedere sine licentia pape

**I**n prelati p pntibz que tenet ab impate tenent solvere tributum p bellis adeo iudicio

**I**n capto in bello iusto sit infensum

**I**n ecclia bellum debent iudicare iudicio

**I**n dgentes in bello qui pugnare no possunt iudicant immunitate bellantiu

**I**n licet prelati tpe tpe iudicant bellum iudicare et eis interesse et ad bellum alios ostari

**I**n licet prelati p iura subdit sui in punita bellum iudicare et alios q iurantes capere

**I**n delegatus pape possit iudicare bellum i iudicare dactum seculari

**I**n bella iudicat p eccliam q eccliam sit meritoria

**S**ecus et ultimus tractatus terti pnapalis pnt p modum tribule f quot sint pnt belloz corporaliu d quibz repone iure expresse p

**Q**uarta tractatus terti pnapalis f de bello pnapali quod sit ob meliam fin et diuidant in ato su pnt pnapalis

**P**rima pars p

**Q**uid sit pnapale bellum

**S**ecunda pars p

**Q**uot sint sps pnapalis belli

**T**ercia pars p

**Q**uo iure iudicet sit pnapale bellum bellum iudicare p

**I**n clerici q pnt hoc bellum iudicare d dicit

**I**n cu licet clerico se defendere etia accedendo hoc sibi licet in ecclia

**I**n licet clerico inuas celebrare se defendere et accedere et si sic pnuato officio celebrare

**I**n baptizanti inungentia qferant ordinat et singula sacramenta qferant inuas licitum sit collatum illor postponere inobtem

**I**n pntenda sit more iusti sacerdotis cum pueru in morte articulo baptizat an nita etna ipius pueri ne sine baptismo debeat

**I**n qonacho licet se defendere sine licentia abbatis sui

**I**n suo licet se defendere sine iussu dno

**I**n baptizans qui qnt p leges municipalis etia impune possunt licet se defendere

**Q**uinta pars f q quos licet hoc pnapale bellum iudicare p

**I**n licet q supore suu

**I**n q iudicet etia si iuste aliquid agat

**I**n filio q pnt

**I**n monacho q abbate

**I**n suo q dno

**S**ecunda pars f p quibz licet hoc pnapale bellum iudicare et diuidant in duas pnt pnt pnapalis p

**P**rima pars f p quibz pnt licet p

**I**n licet pnt p filio

de dicit

de pnt et captivis



In marito puxore.

An p fce puxore et alio omnia psonis.  
An quo teneatur que defendere ne ad  
alio cadatur.

An Bassallus teneat iuuare dnm suum.

An fimo teneat defendere dnm suum.

An miles teneat defendere prepositu suu.

An Bassallus uidens dnm iniustum co  
vna pte patet ex alia. Vtūq pariter.  
in more arculo. nisi iuuentur. nec  
iuuare pot nisi alter qd que iuuabit.

Quid iuris eodem themate retento in  
clero qui uidens epm suu iniustum ex  
vna pte patet ex alia. Vtūq parit  
in more arculo. nisi iuuentur. nec  
iuuare pot nisi alter. qd que iuuabit.

Secunda po. f. p quibz rebz liceat. Etra.

An liceat p rebz iuste pposse.

An p iuste pposse.

An et si liceat res defendere. defendere  
etiam cu moderamine inculpate tutele

si cadat ul inualer regularitate incitat.

An p rebz suis defendendis q clerici exco  
municati inadat manus inhaend.

An p rebz defendendis trans amias  
licet sit subdum impendere.

An p rebz defendendis licet sit sic ut  
ome um vi repellere. sicut q quos licet  
est p psonis.

An p rebz de psonis ul q modatis. licet.

um vi repellere.

Secunda po. f. qualiter liceat hoc pncipa  
re bellum indere. q.

An liceat cu moderamine inculpate tutele

Quid sit moderamine inculpate tutele.

et que in eo requirant.

An liceat ubi et debet cu enst se defende  
re o pux et robustum pugno an puidere

An et si liceat in qm tenti se defendere.

qualiter intelligatur illud in qm tenti.

Qualiter intelligatur. equalentia in ip  
actu dolente.

An vindicasse videat no defendisse.

spoliatoru meu de possessione mea. expulsi  
qu an sansdare volebat de possessione re  
stauranda.

An parati ad me puenendum ex pomea  
debeam ul cu puenit.

An miles que diuinus aqreditur. conse  
atur dim vi repellere. si pperat et puenit  
cu in al fugere possit.

An si vulneratus post vulnera in pma  
vulnerante. et ipm pueniat quod in no d  
punit debeat ut de lofus. id ut culpabilis.

An violentia illata psonis. possit p amica  
pulsari sicut illata rebz.

An finiens de mandato dñi fin exore ipi  
interueniens exaferu.

Secunda et ultima po. quare tuamio  
retra pmapalis. R.

Quis sit finis pncipalis belli.

Quintus tractatus in pmapalis. f. de  
pncipali bello quod sit ad defensam  
milia corpis quod representat nicipatur.  
et diuiditur. iste tractatus pma fin diu  
sione in duas ptes pmapales. R.

de repulsis.

Prima pars pmt vnde et agno oram  
habuerunt representat.

Secunda po. f. de casu repulsali.

De cu producatua sue efficietie repulsali.

Tercia po. f. de cu materiali et diuidit in

quatuor ptes pmapales. R.

Prima po. f. de materia in qua. R.

Quid sit materia in qua.

Quid sit materia circa qua.

Quid sit materia q qua.

Quid sit materia ex qua.

Quibz psonis qcedat facultas repulsali.

An miles repulsali qcedantur.

An cum no subiectis iurisdictioni ciuitatis.  
et al no facientibz finitio sint indicende  
repulsali.

An Cui p quetam qcedant repulsali.

Ciuitatis origino.

An cum et finis p cum limitate in  
repulsali qcedant.

An cum vni ciuitatis qui po ul statuto.  
retrahant ut ciues alterius ciuitatis p  
eamdem qcedi possint repulsali.

Secunda po. f. de materia circa qua. R.

An q res corp qui capi no possunt viget  
repulsali possint in dia repulsali.

An repulsali simpliciter indicat. exaeri possit  
q bona existentia in territorio ciuitatis.

in qua sint indicat. ut capiant et rediant  
intra territoriu ciuitatis indicende.

An si vna ciuitas indicat repulsali q  
alliam possit rector. ciuitatis indicende.

scribendo rectori ciuitatis q qua qcedere re  
repulsali in res ibi situatis.

Tercia po. f. de materia q qua. R.

An repulsali indicat p vna ciuitatem.

retra hoies alterius ciuitatis. exaeri possit  
retra incolae illius ciuitatis.

An repulsali indicat p vna ciuitate qtra  
hoies alterius ciuitatis. exaeri possit qtra  
hoies illius ciuitatis. allibi morantes.

An repulsali exaeri possint q ciues ul  
incolae vnius ciuitatis. honora subiectos  
cuiusdam qui ead sint ciues alteri ciuitatis.

An qtra quilibet exaeri possint repulsali.

An q clericos no quingatos. Jic et an q  
quingatos exaeri valeant repulsali.

An ep negligente de clericis suis. iust  
ciam facere. nec hui possit rectoris ad si  
prorem possint in dia repulsali. q clerico  
eodem puidet seculari.

An q bon ul ead al studentes bono  
ciuitis p dñi p studio exaeri possit repulsali.



pro hinc illuc cunctis capis i q ampl fin

Optima et ultra p<sup>o</sup>. f. qualis fac  
Duellum v<sup>o</sup>.

1000



**Q**ualiter duellum purgatoriu adinstat  
sit iudiciu qrenuosi.

**A**n iuramentu & astu int duellantes sit  
prestandum Et p quem.

**A**n vne p championem dato mcaibus  
dure pmissis liceat etia alteri parci da  
re championem.

**Q**ualiter mcaib hinc inde cu Campio  
credatur per ipso dato & cessio.

**A**nquillu admittat p championem

**I**n cuius electio sit duellum.

**Q**ualiter ordinetur duellum.

**Q**uibus armis duellari debeat.

**A**n si arma seu fustes duce duellantiu  
frangantur al edant debeat alia dari.

**Q**uibus duellantiu pns pauerere debeat.

**A**n duellum pma die no finit sequenti  
die terminari possit.

**A**n in duello subcumbens in expensis a

**A**n pucans in duello subcumbens pu  
niatur pena talionis

**A**n pucans ad duellum p crimine sub  
cumbens et q dempnatus possit de eodem  
crimine accusari in iudicio qtempnoso.

**A**n pucans ad duellum p crimine pub.  
desistere aducllo madat pena turpilliani.

**A**n pucans ad duellum dure lombard  
possit de iudicio licentia desistere

**A**n pucans ad duellum possit sine pna  
an hnt cretata desistere Item ap et qn  
in duello dicatur hnt cretari.

**E**xpliat tabulla sup libello tractatus  
de bello. dñi Johanne & lignano. deo  
gras Amen Amen Amen.





IOHANNIS DE LIGNANO  
Tractatus de Bello

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The text of the Bologna Manuscript, MS. Miscell. B. 1393,  
as "extended" and otherwise revised  
by  
The Editor

(See the Prefatory Note which follows)





## PREFATORY NOTE

THE preparation of the "extended" text which follows has cost the editor, even with the preliminary aid of an expert in the decipherment of contractions (Miss E. Barker), a very serious expenditure of time and labour.

To begin with, he had to break up the continuous wording of the manuscript into punctuated paragraphs, using capital letters where called for. Then began the far more serious work of correcting the mistakes of the original copyist, and of checking, and re-writing on a uniform system, the endless quotations made by the author from the Bible and the Civil and Canon Laws. The biblical quotations, curiously enough, proved to be the most faulty. The, much more numerous, legal citations were generally right, but needed endless typographical amendment in order to render each distinguishable from its neighbours, and its parts distinguishable *inter se*. The following statement will explain the difficulties of the task, and the steps taken to surmount them. It may also not be unwelcome to readers unfamiliar with Civil and Canon Law.

The mediæval method of citing the Civil Law is comparatively simple. First comes a mention of the collection from which the quotation is taken, whether from Justinian's Digest, Code, Institutes, or Novels, or from the Libri Feudorum; indicated respectively by "ff.", "C.", "Inst.", "Authent.", or "Feud.". Next comes a clue to the "Title" of the Digest, the Code, or the Institutes, indicated by setting out its head-line. Last comes a mention of the specific "law" to which reference is made, indicated, as a rule, not by its number within the "Title" but by its initial, or catch, words. Citations from the Novels or the Feudal laws are somewhat differently managed.

The system of the Canon Law is more complex. The large collections, cited by Legnano, are: the "Decretum Gratiani", the "Decretales Gregorii Papæ IX", the "Liber Sextus Decretalium", and the "Constitutiones Clementis Papæ V". The two last named collections are respectively indicated by "Lib. VI" and "Clem.", but the source of citations from the "Decretum" or "Decretals" has to be inferred otherwise than from abbreviated descriptions of those works, except that the "Decretals" are sometimes indicated by the word "Extra".

The Decretum consists of three "Books", the first of which contains 101 "Distinctiones"; the second 36 "Causæ", each sub-

divided into "Quæstiones"; the third, entitled "De Consecratione", contains 5 "Distinctiones". References are made to Book I by "dist." or "di.", preceded by a numeral; to Book II by "q.", preceded and followed by a numeral; to Book III by the words "De Consecratione," "dist." or "di.", followed by a numeral. References to the Decretals, Sext, and Clementines, without any mention of the "Books" into which they are divided, specify merely the "Title" in question, indicated only by its head-line, e. g. "De Iureiurando", or "De Sent. Excomm.", with which the canonist is presumed to be familiar.

The ultimate reference in the case of Book I of the Decretum is to a "canon", in the other cases to a "chapter", and is made as a rule by setting out the initial, or catch, words of the canon or chapter.

The preceding statements must not be taken as exhaustive, e. g., the third Quæstio of Causa 33 constitutes an independent treatise, entitled "De Pœnitentia", consisting of several Distinctiones, and is so quoted.

In this "extension", pains have been always taken to commence the head-line of a "Title" with a capital letter; to distinguish between "canons" and "chapters"; to print the catchwords of the ultimately cited "lex", "canon", or "chapter", in italics; and to mark the termination of each quotation, where it does not end a sentence, by a semicolon. It is hoped that the search for a quoted passage may have thus been rendered, to a reader armed with the indices of catchwords to be found in good editions alike of the Corpus Iuris Civilis and the Corpus Iuris Canonici, not prohibitively difficult. Such wrong references as have been detected have been sometimes indicated by a mark of interrogation, (?); sometimes they have been enclosed in brackets [ ], after which the right reference has been inserted.

The original treatise is not divided into chapters, but, for convenience of reference, the chapter divisions occurring in the print of 1477 have been inserted in brackets, so far as they are applicable, in the margin of this extension.

T. E. H.



INCIPIT TRACTATVS DE BELLO DOMINI

IOHANNIS DE LIGNANO

DE MEDIOLANO IVRIS VTRIVSQVE DOCTORIS

“**R**EX Israel mutavit habitum et ingressus est bellum,” iii Regum xxii capitulo. Israel est solium Domini et, ut scribitur Ieremiæ iii cap., “vocabunt Israel solium Domini.” Et hoc est patrimonium sanctæ Romanæ Ecclesiæ, cuius caput est Ierusalem, id est alma civitas Bononiæ, quæ vere vocari potest Ierusalem. Nam in ipsa quorumcunque scibilium, et maxime iuris, dilucidata est veritas. De hac scribitur, Zachariæ viii cap., “Vocabitur Ierusalem Civitas veritatis.” Hæc “formosa sicut Ierusalem,” Cantici vi capitulo. De hac etiam clamat Propheta, Sophoniæ i cap., “scrutabor Ierusalem in lucernis”; et Actuum v cap., “Replevistis Ierusalem doctrina vestra.” De hac etiam scribitur Apocalypsis xxi cap., “Vidi Civitatem sanctam Ierusalem,” et ibidem xxi cap., “Ostendit mihi Civitatem sanctam Ierusalem descendentem de cœlo,” id est Bononiam. Et vere de cœlo descendit, Cum ibi fons veritatis, iurium quæ adeo per ora principum promulgantur, viii di., *quo iure*; C. De longi temporis præscriptione, l. ultima. De hac scribit Apostolus ad Hebræos xii cap., “Civitatem Dei viventis Ierusalem cœlestem.” Et idem Apostolus ad Galatas iv cap., “Quæ autem sursum est Ierusalem libera est.” De hac etiam scribitur, ii Paralipomenon vi cap., “Elegi Ierusalem ut ibi foret nomen meum.”

Verum etiam, permittente Altissimo, et superius disponentibus corporibus, hæc Civitas Bononiæ, ut Ierusalem, ad extremum mutata est et devastata, et propter inhabitantium delicta innumera, odia mutua, diu comminatus est Altissimus ipsius destructionem, ut scribitur [Iudicum xxix] iv Regum xxi cap., “Delebo Ierusalem sicut deleri solent tabulæ.” De insidiis inhabitantium scribitur ii Paralipomenon xxv cap.,\* “Descenderunt insidiæ in Ierusalem.”

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\* In fine, “tetenderunt ei insidias in Ierusalem.”

Et propter superbiam inhabitantium comminatus est Dominus per Prophetam, dicens, "Computrescere faciam superbiam Iudæ et superbiam Ierusalem multam," Ieremiæ xiii capitulo. Et propter hanc clamat Propheta contra inhabitantes, dicens: "Dabo Ierusalem in acervos arenæ." Et alibi propter hoc clamat Propheta, dicens, "Ponam [Ierusalem] Samariam quasi acervum lapidum," Michææ i capitulo. Et propter hoc clamat Propheta contra nutritos in ea, dicens, "Contristatis Ierusalem nutricem vestram," Baruch iv capitulo. Et propter hoc, scilicet inhabitantium excessus, factum est ut exercitus regis Babylonie obsident Ierusalem. Ieremiæ xxii capitulo. Et propter hoc factum est quod scribitur Ezechielis v cap., "Hæc est Ierusalem in medio gentium," id est hostium. Pœnæ causa factum est etiam quod scribitur Threnor. i cap., "Facta est Ierusalem sicut quasi polluta."

Alma igitur civitas Bononiæ vere Ierusalem nuncupatur, et caput solii, id est patrimonii, sanctæ matris Ecclesiæ. Rex autem actu regens et gubernans est Reverendissimus in Christo pater et dominus, dominus Egidius, miseratione divina Sabinensis Episcopus. Hic enim mutavit habitum et ingressus est bellum. Nam de throno pacifico, id est sacratissimo Collegio Cardinalium, et de latere dextro sanctissimi Papæ Innocentii Sexti destinatus est ad recuperationem Ierusalem, id est patrimonii penitus deperditi, et ni ipsius recuperatione mutavit habitum. Nam, relicta pontificali quiete, ingressus est bellum, et bellum forte ut princeps serenissimus. Nam ante ipsum non erat Rex in Ierusalem, ut scribitur Iudicum [xxii] xxi cap., "in diebus illis non erat Rex." Et propter ea dixit Dominus ad eum, scilicet dominum Egidium, "misi te regere super populum Domini," Iudicum ix capitulo<sup>o</sup>. Et ipse dicere potest "elegit me Dominus ut essem Rex," primo Paralipomenon, xxviii capitulo. "Et ipsum constituit Dominus Regem super universum Israel," i Paralipomenon xii capitulo<sup>o</sup>. Et iste "Rex surrexit de solio Domini," Ionæ iii capitulo. Et bene ingressus est bellum et feliciter. Nam ut allatus ala duplici, scilicet summæ prudentiæ et fortitudinis inclitæ, omnia iura sacrosanctæ Romanæ Ecclesiæ, tyrannice usurpata, de nihilo produxit ad esse, de tenebris ad lucem, ut dici possit quod de nihilo aliquid fecerit, Genesis i cap., et lex unica in principio, C. De rei uxoriæ actione. Vere igitur, ut Rex Israel, mutavit habitum et ingressus est bellum.

Quia igitur Rex Israel, id est patrimonii, et maxime civitatis, Bononiæ, quæ est vere caput patrimonii, et quæ, sic ut supra dictum est, de extremo ad extremum deducta, mutavit habitum et ingressus est bellum, et hoc diebus nostris, immo et pendet, satis videretur incongruum hoc sub silentio penitus pertransire.

Idcirco ego, Iohannes de Lignano de Mediolano, minimus inter ceteros iuris utriusque doctor, ad vos Reverendissimum in Christo patrem et dominum meum, dominum Egidium, miseratione divina Episcopum Sabinensem in partibus Italiæ, pro sancta Romana Ecclesia Vicarium Generalem, et verum Regem Ierusalem, transmittendum concepi tractatum facere de Ierusalem, id



est de civitate Bononiæ, et de Bello, quod habitum mutando estis ingressus, hoc ordine. Nam de civitate Bononiæ ponam sex causas implicantes quæ acriter contingerunt dictam civitatem, ab anno domini MCCCCL usque ad MCCCCLX, maxime propter quæ insurrexit dominii mutatio, et cum quotis temporum et aspectibus annorum circa meridies dierum quibus hæc contingerunt, non autem horarum. Et hæc appono quia in aliquibus tractatibus intendo iuris metas excedere, explicando aliqua quæ forte evenient, et cuilibet causæ submittam unum tractatum vel plures, ut occurret. Aliquos tractatus transibo sub silentio, aliquos explicabo, unum solum exnunc publicabo, videlicet tractatum De Bello, promittens, Domino annuente, singulos tradere explicatos, tempore congruo, et causa cessante inhibitionis, supplicans eidem Reverendissimo Patri ut imbecillitatem intellectus supportare dignemini, et hoc, ut modicum suscipere exordium, corrigendum si placuerit et reformandum, iuxta gentilium Sapientis auctoritatem: "Exiguum munus, etc." Descendo igitur ad themata, et ex causa ponam in figura. Et ecce.

**S**edente Iove clavigero, clementiam \* Sexto ferente, super cathedram piscatoris, ex eius edicto præpropere Mars † accessit, ut libere ingrederetur viride et floridum Tauri pabulum.‡ Hoc fuit annis Domini MCCCCL, die viii Iulii. Tunc Sol in Cancro, Grad. xxiii, Min. xxxii. Luna cum Leone, Grad. xxviii, Min. xxi. Draco capite geminabat, Grad. xxvi, Min. ix. Saturnus in Ariete, Grad. xxvi, Min. xxxii. Iupiter cum Cancro, Grad. xxviii, Min. li. Mars in Libra, Grad. xi, Min. xviii. Venus retrogradabat in Cancro, Grad. xxix, Min. xx. Mercurius Venerem sequebatur in Cancro, Grad. ix, Min. x. Et tunc altissimus filiorum Saturni,§ circulum || gestans a Iove,¶ interius viperatus, ex limbis lateralibus tribus \*\* altis viperis exsurgentibus, a septentrione descendens, intercedente Mercurio †† Iovem, cum Marte pervenit in pabulo, et in pastorem perpetuum gregis Taurini exstitit assumptus.†† Et hoc fuit annis Domini MCCCCL, die xxiv Octobris, Sole . . . , Luna in Cancro, Grad. ix, Min. i, Saturno in Ariete, Grad. xxii, Min. xix, Iove in Leone, Grad. xviii, Min. xiii, Marte in Sagittario, Grad. xxiii, Min. xxxii, Venere in Virgine, Grad. xxv, Min. xx, Mercurio in Libra, Grad. xxi, Min. xxv, Capite Draconis in Geminis, Grad. xx, Min. xix, Cauda, etc.

Post temporis lapsus, operante Iovis clementia,§§ necnon et circulo |||| quem Saturni filius ab eo susceperat, factum est quod Saturni filius Iovem in pabulo verbaliter suscepit,¶¶ et ipsum primum gregis pastorem recognovit.

\* id est, Clemente Papa VI regnante.

† id est, exercitus comitis Romandiolæ pro Ecclesia.

‡ id est, Bononiam.

§ id est, Archiepiscopus Mediolanensis.

|| id est, dignitatem pontificalem.

¶ id est, Papa.

\*\* id est, tribus nepotibus scilicet M. B. et G.

†† id est, dominus Iohannes de Pepoli.

‡‡ id est, in dominum est electus.

§§ id est, Papa Clemente.

|||| id est, pontificali dignitate.

¶¶ id est, Archiepiscopus Papam in dominum recognovit.

Hoc fuit annis Domini MCCCCLII, die vii Septembris, Sole in Virgine, Grad. xxiii, Min. x, Luna in Virgine, Grad. ii, Min. xxx, Capite in Tauro, Grad. xiv, Min. xvii, Saturno in Tauro, Grad. xxiv, Min. xxvii, Iove in Virgine, Grad. xxix, Min. xvii, Marte in Sagittario, Grad. vi, . . . Min. xx, Venere in Virgine, Grad. ii, Min. viii, Mercurio in Libra, Grad. xxvii, Min. . . .

Ecce Taurus hoc tempore modico trinum contraxit matrimonium, nec erubuit, vivente coniuge, nunc hunc nunc illum meretricali more appetendo prorumpere, ut dici possit de te quod scribitur Isaiaë [iii] i cap. " quomodo facta est meretrix civitas fidelis plena iudicii ? Iustitia habitabat in ea, nunc autem homicidia. Argentum versum est in scoriam. Vinum tuum mixtum est aqua. Principes tui infideles, socii furum. Omnes diligunt munera, sequuntur retributiones. Pro pupillo non iudicant. Causa viduæ non ingreditur ad eos. Propter hoc ait Dominus exercituum fortis Israel, Heu ego consolabor super hostibus et vindicabor de inimicis meis, et convertam manum meam ad te, et excoquam ad purum scoriam tuam, et auferam omne stannum tuum et restitutam iudices tuos, sicut fuerunt prius, et consiliarios tuos, sicut fuerunt antiquitus. Post hæc vocaberis civitas Iustitiæ." Sic contingit et continget de te Taure, cum tripartitus fiet semicirculus, surget quies, fluet motus, senectus est obstans, sed vitiorum iuventus hoc operatur.

Huic causæ subicio tres tractatus : unum de Marte, id est de Bello. Istum publico. Alium de Iove, id est de Ecclesia, et ipsius gubernatione per pastores suos, et per aspectus narratos, quis exitus ipsius prosperitatis et adversitatis, maxime respectu huius temporis, patrimonii. Alium de Saturno, id est de Imperio et ipsius gubernatione per procures hodiernos, et quis exitus prosperi et adversi, maxime respectu regiminis ecclesiastici et temporalis Italici, licet aliquantulum transcendat metas iuris. Hos tamen nunc non publico, ut prædixi, donec cesset causa urgens.

### *Secunda Causa.*

**P**ost hoc, Saturni filio combusto,\* elevatis tribus supra nominatis viperis,† Saturnum aquilinum ‡ in cordis centro gestantibus, et combusti thronum ascendentibus,§ ipsi indivisim in pabuli pastores || suscipiuntur, Et hoc fuit annis Domini MCCCCLIV, die xi Octobris. Tunc librabat Sol Grad. xxvi, Min. xxii, Luna rugiebat cum Leone, Grad. xvi, Min. xlv, Draco caput tegebat in Ariete, Grad. iii, Min. lviii, Saturnus geminabat, Grad. xxiii, Min. xxiv, Iupiter librabat, Grad. xxii, Min. xvii, Mars in Capricorno, Grad. xxv, Min. iv, Venus luxuriabat in Scorpione, Grad. xvi, Min. xiv, Mercurius in Scorpione, Grad. xi, Min. xlvi, Draco caput tegebat in Tauro<sup>o</sup>, Grad. iii, Min. lix.

\* id est, mortuo Archiepiscopo.

† id est, nepotibus.

‡ id est, aquilam imperialem.

§ id est, succedentibus Archiepiscopo.

|| id est, in dominos Bononienses.



Post parum temporis, sorte posita super hereditate combusti,\* maior ex viperis † in pabulum solus elevatur. Hic non do quotam, quia non pondero ad sequentia. Post hæc, Mercurius, ‡ a viperis penitus exterminari pertimescens, intra pabulum ut pastor assumitur. Ecce hoc tempore brevissimo hic Taurus, luxuria furens, aliud trinum matrimonium contrahere non erubuit. Et quia sic luxuria furens in totuplici contrahendo contubernio, naturam purgabilis excessisti luxuriæ, pluit Dominus super te sulfur et ignem a Domino de cœlo, et subvertit te, et omnem contra te regionem et habitatores, et omnia virentia terræ, ut scribitur Genesis xix capitulo. Cum linea recta semicirculabitur quid tibi curvum est rectificabitur. Hoc autem fuit annis Domini MCCCLV, die xvii Aprilis, Sole in Tauro, Grad. v, Min. vii, Luna in Geminis, Grad. xxviii, Min. xxxi, Capite in Piscibus, Grad. xxiii, Min. xlix, Saturno in Geminis, Grad. xx, Min. xvii, Iove in Sagittario, Grad. xxii, Min. xv, Marte in Geminis, Grad. v, Min. xxi, Venere in Tauro, Grad. xxvii, Min. xix, Mercurio in Ariete, Grad. xi, Min. xxii.

Huic secundæ causæ subicio tractatus de temporali dominio universaliter infra Imperium, tractando ipsius originem, ipsius species, divisionem, successionem, modum gubernationis et conservationis, explicando unumquodque regimen, a minimo usque ad summum, in toto universo, ultra iuris metas, explicando qualiter secundum varietatem climatum mundi variantur mundi regimina, et qualiter in eisdem climatibus, variatis superiorum motibus et aspectibus, variantur mundi regimina, nam aliquando tyrannides, aliquando populus, aliquando principatus naturalis, communi et vulgato sermone, ut latissime prosequar, in prosecutione huius tractatus.

### *Tertia Causa.*

Post hoc, evanuit vipera maior, § et Mercurius || recognovit sequentem ¶ in pabulo. Hoc fuit annis Domini MCCCLV, die xxvii Septembris <sup>o</sup>, Sol cum Capra salibat, Grad. xiv, Min. xlvi, Luna mordebatur a Scorpione, Grad. xxiii, Min. xxxi, Draco piscabatur cum Capite, Grad. x, Min. xix, Saturnus cum Cancro, Grad. ii, Min. xlv, Iupiter cum Capra pascebat, Grad. vii, Min. xxxiii, Mars morsum patiebatur Scorpionis, Grad. xxi, Min. xli, Venus cum Capra, Grad. i, Min. liii, Mercurius Venerem præcedebat super Capra, Grad. xviii, Min. lv. Ecce, inverecunde Taure, novum aliud matrimonium sic instantanie non erubuisti contrahere, sed parum post hoc, huic dato libello \*\* repudii, O. revolvit ad A., et rediit cum Mercurio. †† Et hoc fuit anno Domini MCCCLVI, die xi Februarii, et tunc Sol piscabatur, Grad. o <sup>o</sup>, vii, Min. lvii, Luna geminabat, Grad. xvii, Min. lvi. Caput Draconis erat repletum Piscibus,

\* id est, diviso dominio Archiepiscopi.

† id est, dominus M.

‡ id est, dominus Iohannes de Olegio, dubitans mori.

§ id est, mortuus est dominus M.

|| id est, dominus Io. de Olegio.

¶ scilicet dominum B.

\*\* id est, repulso domino B.

†† id est, dominus Io. de Olegio dominium reassumpsit in solidum.

Grad. viii, Min. ix, Saturnus cum Cancro retrocedebat, Grad. o, Min. xlv, Iupiter saltabat cum Capra, Grad. xvi, Min. . . . Mars Sagittam ferebat, Grad. xviii, Min. lxiv, Venus aquam spargebat, Grad. xxiv, Min. lviii, Mercurius piscabatur, Grad. o, Min. xxxviii. Inhonestum visum est Tauro binos simul coniuges . . . Vtilius fuisset Tauro binos simul pati . . . quam per tot contubernia divagari. Et quia sic divagata es, tibi continget quod scriptum est : "Adducet Dominus super te gentem de longinquo et de extremis finibus terræ, in similitudinem aquilæ volantis cum impetu, cuius linguam intelligere non possis, gentem procacissimam quæ non deferat seni nec misereatur parvulo, et devoret fructus iumentorum tuorum ac fruges terræ tuæ, donec intereas, et non relinquat tibi triticum et vinum et oleum, armenta bovum, et greges ovium." Hæc allocutus est Dominus ad populum prævaricantem, ut scribitur Deuteron. xxviii capitulo. Cum quaternarium resolvetur internarium tunc tibi fiet mobile fissum.

Huic causæ subiungo tractatus de concessione et recognitione dominii temporalis, explicando varios modos penes varietatem dominiorum et concedentium et recipientium.

#### *Quarta Causa.*

**P**ost hæc, constante matrimonio Mercurii cum Tauro,\* flores et viriditas pabuli taurini fuerunt regnante Iove clavigero, innocentiam Sexto ferente, totaliter exsiccati,† et hoc fuit annis Domini MCCCLVII, die xii Aprilis. Tunc Sol erat cum furibundo Tauro, Grad. o, Min. xlvi, Luna fundebat Aquas, Grad. v, Min. xxix, Draco caput sub unda tegebat, Grad. iii<sup>o</sup>, Min. xxxviii, Saturnus cum Cancro, Grad. xv, Min. xvi, Iupiter natabat in Aquis, Grad. xxvi, Min. xxiii, Mars geminabatur, Grad. xv, Min. xiv, Venus ludebat cum Piscibus, Grad. xxi, Min. xx, Mercurius cum Tauro, Grad. xi, Min. xxxii. O Taure invecunde, hæc pœna fuit antiqui et temerarii tui divortii a coniuge qui tecum constante matrimonio auxit dotes tuas, te acutis cornibus super quadriennium elevando et de septentrione versus meridiem latissimo solio præficiendo. Sed furore impatiens, facto divortio, ruptis cornibus corruisti. Et, quia sic elatus, inquit Dominus ad te Taurum : "eo quod elatum est cor tuum quasi cor Dei, idcirco adducam super te alienos robustissimos gentium, et nudabunt gladios suos super pulchritudinem sapientiæ tuæ et polluent decorem tuum, et interficient et trahent te, et morieris in introitu occisorum in corde maris. Numquid dicens loqueris, Deus ego sum, coram interficientibus te, cum sis homo non Deus ? in manu occidentium te, in manu alienorum, morieris, quia ego locutus sum, inquit Dominus," ut hæc scribuntur Ezechielis xxviii capitulo. Cum Iob cornibus Tauri medebitur, quod in centro est ad sphaeræ concavum reducetur. Huic causæ adiungo tractatum De Ecclesiastica Censura, circa singulas species ipsius tractatus explicando singulariter.

\* id est, præidente domino Iohanne de Olegio.

† id est, latum fuit interdictum divinatorum et suspensio studii in civitate Bononiæ.



*Quinta Causa.*

Post hæc iterum depascente Mercurio,\* intra pabulum Tauri secundo viperatus† in filium Saturni per adoptionem assumptus,‡ Martem motu veloci, ut Tauri pabulum ingrederetur propere destinavit,§ qui plures gradus lucidos et diurnos ipsius est ingressus.|| Finaliter, operam dante Mercurio ¶ altissimus Iovis frater,\*\* ab eo pontificalia, a Saturno imperialia, a Marte bellica, supra ceteros Ecclesiæ cardines gestans, Martem †† directum præveniendo, intra pabulum est susceptus,‡‡ ut circulo primæ causæ revoluto. Sicut tunc motum velocem tarde gradiens prævenit in termino, sic nunc vice versa volantem reptilem præcessit, sed tunc præveniens virilius occupavit. Circumflexus circumflectetur, tandem vix eidem clavibus aperietur, clavibus clauditur. Anterius non negligat claviger quod posterius, alis tensis volatile, tendit ad astra. Requirit rugientem ut emittat rugitum Saturnus. Retrogradus nititur erigi. Volatus non attinget astra, sed terrea circumspiciet, rugitus non longe sonum, nec Saturnus erigetur ad summum. Tibi, Taure, insperata fiet quies. Quintus in Zodiaco difformiter motus ut quiesceret donec radiis iungatur, nec circumflectetur sinet. Ab auge iam motus, per circumferentiam epicirculi fluens efficitur unius. Prius circumvolet, post circumvolvitur, ruiturus post non sublevetur. Volatilium multiplex reducetur, et unum vidi volantem ad astra plumis contingentem et ima. Vidi castrametantem ubi non pugna, caveat ne post mox fiat una. Post vidi alterum angelum volantem in manibus tenentem evangelium. Saturnus, in circulari epicirculo de opposito deductus, ad auge retrogradando de auge deducetur ad assem. Quod inum transduxit in summum, quod summum circumducet in inum, surget Leo grandis et mixtus sonitu scindens pacifer venia tritus. Concutiet fossa, reducet summum ad ima, sparsa redigentur in chaos, ut ex ipso astra derivarunt in troncōs. Non lugeat Taurus cum vicinus quietis speretur eventus. Currus transvehitur, bobus punctis occa subitur. Catuli pascuntur, uni primum vel alteri sequens astute. Vidi plumata in nido minuto, imperfecto, niveo, corvino. Scindetur nidus et solium obtinet unus qui fuit trinus, post binus sextus et unus. Erigitur tutus, titubabat alter, et ecce nullus. Video duos primos cœli consiliarios ad grande colloquium accessuros. Fiet colloquium in loco humido et venenoso. Ibi tractabitur ut mundus inferior concutiatur. Ibi tractabitur ut in mundo sectetur. Ib tractabitur ut mundi principatus permutetur. Ibi tractabitur ut Ecclesia periclitetur. Ibi tractabitur ut pestilentia et fames eleventur. Ibi tractabitur ut regio maritima conquassetur. Ibi tractabitur ut mundi princeps in sede permutetur, fiet magna concussio. Tres autem inferiores consilarii in alio angulo anteriori eiusdem domus eodem tempore colloquantur adinvicem, et multa de mundi dispositione disputabunt, et diffinient, et hæc colloquia fient annis Domini MCCCLXV de

\* id est, dominus Iohannes de Olegio.

† id est, dominus B.

‡ id est, vicarius imperialis effectus.

§ id est, magnum exercitum ut civitatem apprehenderet transmisit.

|| id est, pluribus fortibus comitatus.

¶ id est, dominus Iohannes de Olegio.

\*\* id est, dominus Egidius, domini Papæ legatus.

†† id est, exercitum domini B.

‡‡ id est, in dominum Bononiæ assumptus.

mense Octobris. O Taure, oportet te attentum esse ac cornibus paratum, cum mundi fulgor in stabulo tuo subumbrabitur, nec negligas. Et fiet hoc MCCCCLXI, die v Maii. Hæc in grandi colloquio et multiformi tractarunt planetæ, de quibus in themate dixi. Hæc varii operantur revolutionum aspectus, et signandum est aliud in matrimonium Tauri. Nam annis revolutis quibus mense et die divertit, repulso O.,\* eisdem reintegravit recepto S.†

O Taure, motu pergens multiformi, cum motus sit ordinatus ut terminetur in quiete, tibi inest ut motus terminetur in motum, et regulariter in deteriorem. Tibi finis motus est principium motus. Tibi quiescere est moveri, nunc imitando gentilem Catonem, qui repudiatam reassumpsit, regrediendo unde diverteres, inquietis terminum dirigere confidebas. Sed adhuc est ut movearis donec Altissimo placuerit stabilem tibi fingere modum. Ingressus est plene Iovis frater annis Domini MCCCCLX, die primo Aprilis. Tunc Sol cum Ariete, Grad. xix, Min. xxiv, Luna librabat, Grad. xi, Min. xxi, Draco cum Capite sagittabat, Grad. xvii, Min. xxxvi, Saturnus rugiebat cum Leone, Grad. xxv, Min. viii, Iupiter cum Tauro, Grad. xxi, Min. xviii, Mars piscabatur, Grad. vi, Min. xxiii, Venus Martem piscando præibat, Grad. x, Min. lii, Mercurius in Ariete, Grad. xvi, Min. x. Huic iungam gesta Pacis, cum facta fuerit. Et faciam tractatum singularem De Pace. Taure, infirmaris non plectorice, sed cathocinie, et vere cathocinie, quia humorum difformitas et excessus in quali diu provisum est in quanto, sed fervor in quali speras medicorum plures sunt, ut tibi medelam afferant.

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## INCIPIT TRACTATVS DE BELLO

[Cap. i.]

In tractatu Belli sic procedam :

Primo, ponam descriptionem Belli Humani, de quo principaliter tractaturus sum, in genere.

Secundo, dividam Bellum per membra.

Tertio, prosequar singula membra.

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### *Quid sit Bellum, et qualiter describatur ?*

Bellum sic describitur. Bellum est contentio exorta propter aliquid dissonum appetitui humano propositum, ad dissonantiam excludendam tendens.

Dixi "contentio." Hæc ponitur ut genus, nam sub se continet et bellicam contentionem et alias quascumque ut l. *si usque*, § fin., ff. De aqua pluviarum arcenda. Dixi "propter dissonum," et est causa unde oritur quælibet con-

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\* id est, Hostiensi legato.

† Sabinensi legato.



tentio. Dixi "appetitui humano," ad differentiam brutorum. Dixi "ad dissonantiam," etc., et est causa finalis cuiuslibet belli, nam quodlibet bellum tendit finaliter ad tollendam displicentiam quæ fuit belli introductoria, et sic fiunt bella propter pacem, xxiii, q. i, *noli*.

*De divisione Belli, et qualiter dividatur.*

[Cap. ii.]

Secundo, Bellum sic dividitur. Bellum aliud Spirituale, aliud Corporale.

Spirituale aliud Cœleste, aliud Humanum. Spirituale Cœleste est de quo habetur Iob, xiv capitulo<sup>(9)</sup>. Humanum est de quo scribitur Ad Romanos vii cap., ibi "video aliam legem repugnantem legi mentis meæ"; xxxii, q. v, *si Paulus*.

Corporale aliud est Vniversale, aliud Particulare. De Vniversali habetur ff. De captivis, quasi per totum; xxiii, q. i, et q. ii.

Particulare aliud fit ob tutelam corporis sui et rerum, et de hoc habetur ff. De iustit. et iure, l. *ut vim*; ff. De vi et vi ar., l. i, § *vim vi*; et ff. Ad leg. Aquil., l. *scientiam*, § *qui cum aliter*; et l. i, C. De vi; et cap. *olim*, De restit. spol.; et in Clem., *si furiosus*, De homicidio.

Aliud fit ob tutelam corporis mystici, vel eius partis, propter defectum iurisdictionis, quod "Represaliæ" nuncupatur, de quo in Authent., ut non fiant pignorationes; et De iniuriis, Lib. VI. Aliud fit propter contumaciam resistentis iurisdictioni iudicis, de quo in l. *qui restituere*, ff. De rei vindicatione.

Aliud fit propter purgationem, quod "Duellum" appellatur, de quo C. De gladiatoribus, l. una; et De pugnantibus in duello, per totum titulum. Verum est quod posset dividi prima divisione per iustum et iniustum, sed in his modicum insistendum, et singula membra singulariter sunt explicanda ex ordine suo.

Et primo de Bello Spirituali Cœlesti, brevissime illud explicando, et sic de singulis.

*Ordo Tractatum.*

Tractabo igitur de Bello Spirituali Cœlesti.

Secundo, de Spirituali Humano.

Tertio, de Corporali Vniversali.

Quarto, de Particulari, quod fit ob tutelam corporis sui.

Quinto, de Particulari, quod fit ad defensam mystici corporis, quod "Represaliæ" nuncupatur.

Sexto, de Particulari, quod fit ad purgationem, quod "Duellum" nuncupatur.

[Cap. III.]

*De Spirituali Bello Cœlesti.*

Redeundo ad singula, dico quod cœleste bellum insurrexit propter ingratitudinem insurgentem propter defectum fissionis<sup>(1)</sup> caritatis impressæ a Creatore, in intelligentiam inter ceteras sublimiorem creatam. Et huic non congruit descriptio superius data. Vbi sciendum est quod, ut inquit Gregorius in Moralibus, ab initio creationis angelicæ naturæ, Altissimus omnium creator creavit Luciferum ceteris angelicis intelligentiis eminentiorem. Nam ipsius primatus non fuerunt inferiores cedris in paradiso Dei, ut scribitur Ezechielis xxxi, abietes, platani, non æquarunt [firmitatem] summitatem nec frondibus eius, nam ipse speciosus factus in multis condensisque frondibus dicitur, quia, prælatum ceteris legionibus, tanta<sup>(2)</sup> illum spiritus pulchritudinis reddidit, quanta et supposita angelorum multitudo decoravit. Ista arbor in paradiso Dei tot quasi condensas frondes habuit quot sub se positas supernorum spirituum legiones attendit. Hic fuit signaculum Dei similitudinis. Fuit iste sic creatus ceteris eminentior, sicut et cetera foramina habuit præparata ad caritatem suscipiendam. Nam hic a principio conditionis suæ capax caritatis est conditus, quia si repleti voluisset [samtibus] sumptibus<sup>(3)</sup> angelicis, tamquam positus in regio ornamento lapidibus, potuisset inhærere, sed caritatem propter superbiam non assumpsit. Si enim caritatis auro se penetrabilem præbuisset, sanctis angelicis sociatus, in ornamento regio lapis scissus mansisset. Habuit ergo foramina, sed superbiæ vitio caritatis auro non sunt repleta.

Quia igitur ceteris iste eminentior fuit, ut signaculum similitudinis Dei creatus, nec caritate propter superbiæ vitium repleti voluit, idcirco peccans, sine venia damnatus est, quia magnus sine comparatione creatus fuit, igitur propter hoc de paradiso eiectus, ut prolixè et pulcherrime videri potest in cap. *principium enim*, De Pœnit., di. ii. Et fuit Gregorii, ut prædixi. Et hoc fuit Spirituale Cœleste Bellum, circa quod, ut præmisi, parum insistendum, tamen, quia dixi ipsum ceteris eminentiorem, est attendendum quod quædam sunt collata angelis in principio creationis suæ communiter, sed differenter, quædam communiter, sed indifferenter. Collata communiter sed differenter fuerunt naturæ sive substantiæ subtilitas, intelligentiæ perspicacitas, liberi arbitrii habilitas. Hæc tamen differenter, nam quidam sunt in substantia subtiliores, quidam in intelligentia perspicaciores, quidam libertate arbitrii habiliores. Collata autem communiter sed indifferenter fuerunt spiritualitas, indissolubilitas, indivisibilitas, immortalitas.

In his omnes parificantur, et per hoc intelliges quibus Lucifer fuerit ceteris eminentior, quia in collatis communiter sed differenter.

Est etiam attendendum quod Diabolus fuit exaltatus per naturalem prærogativam, de qua dictum est, exaltatus est etiam propter victoriam quam habet contra hominem aliquando in bello quod gerit contra ipsum, unde scribitur in Psalmo, "Exaltasti dexteram deprimentium eum," quam victoriam timens David dicebat, "Illumina oculos meos ne unquam obdormiam in morte, ne quando dicat inimicus meus, prævalui adversus eum." Exaltatus est etiam propter superbiam, unde dictum est ei "elevatum est cor tuum in



decore tuo," cum ipse dixit, "ascendam in cœlum, et ponam thronum meum ad aquilonem, et ero similis Altissimo," Isaïæ xiv capitulo<sup>(7)</sup>.

*Qualiter Spirituale Bellum Cœleste est metrum et mensura Spiritualis Humani Belli.* [Cap. iv.]

Hoc igitur fuit Spirituale Bellum quo eiectus fuit Lucifer de paradiso Altissimi, et forte ex illo habuit ortum Spirituale Humanum. Nam in unoquoque genere est devenire ad unum, quod sit primum et mensura eorum quæ sunt in communi genere. In genere igitur repugnantiae bonorum contra mala est devenire ad primum. Primum sunt principia, principium autem virtutis est Altissimus, principium autem vitiorum et princeps est Diabolus. Ipsorum igitur pugna est primum et mensura cuiuslibet inferioris pugnae spiritualis humanæ.

*De naturali deductione Spiritualis Belli corporum cœlestium ad bella terrestria.* [Cap. v.]

Et forte, naturaliter loquendo, bella corporalia terrestria habent bella cœlestia correspondentia, nam, ut dicit Philosophus, necesse est hunc [modum] mundum contiguum esse superioribus lationibus, ut omnis virtus inde regatur, primo Metaphysicorum, et secundo Cœli et Mundi. Omnis igitur actus inferior corporeus dirigitur a supercœlestibus, et ibi est pugna, id est repugnantia virtualis, insurgens propter diversitatem corporum cœlestium, et maxime planetarum, quæ plus apud cuncta operantur quam fixæ, et diuersitatem aspectuum, situum, et motuum eorundem. Quibus forte attentis, non foret bene possibile mundum esse sine bello. Et forte non esset peccatum, secundum semitas naturalium et astrologorum, tenere mundum non posse diuturnari sine bello et cum sola pace, quod sic posset aperte demonstrari.

*Qualiter secundum theologos et naturales philosophos necessario sit dare bellum.* [Cap. vi.]

Positis causis sufficientibus et necessariis productivis alicuius effectus, necesse est poni ipsum effectum, sed belli ponuntur causæ sufficientes et necessario productoriæ, ergo necesse est ponere ipsum bellum. Probatur maior. Nam effectus assequitur causam suam quoad esse productivum et destructivum, i, q. vii, *quod pro remedio*; i, q. i, *quod pro necessitate*; lv di., *priscis*; lxi di., *neophitus*; i, q. i, *detrahe*; De baptis., *debitum*. Probatur minor. Nam secundum semitam naturalium impossibile est cœlum stare, Physicorum vii et viii, immo ipsius motus est perpetuus, et corpora cœlestia ex sui natura operantur in hæc inferiora effectus repugnantes, et hæc effectuum repugnantia insurgit hic inferius propter varietatem aspectuum corporum cœlestium et motuum ipsorum, quod patet ex sensatis. Nam, stricte in proposito dedu-

cendo, propter variam correspondentiam corporum cœlestium, tempore constructionis civitatum sunt repertæ civitates naturaliter se odio habentes, et sic amicæ, sic geneologiæ, sic et particulares homines qui se naturaliter odio habent, non præcedentibus de meritis hinc inde, sic et naturaliter se diligentes. Cum igitur bella oriantur propter odia et dissonantias appetituum, hæc autem necessario producentur a motibus corporum cœlestium, quæ semper et necessario operantur, infertur bella fore de necessario, attenta necessitate materialis et corporeæ naturæ. Fateor tamen quod potentia naturalis non necessitatur directo, et per se immo resistere posset. Hinc est quod inquit Ptolemæus in libro Centum Verborum "anima sapiens dominatur astris, quis est ille regulariter, et laudavimus eum," fateor tamen, si theologi secus sentiant, me subicere, in omnibus quæ eos contingunt, eorum correctioni.

De hoc tamen bello nihil intendo tractare, quia nimis foret iuris metas excedere.

Causæ autem theologiæ, propter quas non est pax universalis in orbe, sex solent reddi. Prima, quia non puniuntur maleficia, Ecclesiastici iv capitulo. Secunda, abundantia rerum temporalium, Genesis [iii] xiii cap., facta est rixa inter pastores Abraham et pastores Loth; Iacobi v, unde bella et lites, etc. Tertia, quia non occupamur in pugna contra Dæmonem, ideo non pugnamus ut homines, Isaïæ xxviii cap., "percussimus fœdus cum morte et cum inferno"; ad Ephesios [v] vi, "non est colluctatio adversus carnem." Quarta, quia non consideramus damna guerræ in qua perdimus animam et corpus et divitias, Ieremiæ lvi<sup>(\*)</sup> capitulo. Quinta, quia non ponderamus eventum belli, qui est dubius, primo Regum xii. Sexta, quia non servamus præcepta Dei, Ieremiæ iii cap.<sup>(\*)</sup>, "utinam attendisses mandata mea, etc."

Ex prædictis igitur infertur duplex spirituale bellum cœleste. Primum, Creatoris contra Luciferum ipsum, propter defectum caritatis in superbiam delatum, penitus de throno cœlesti ad centrum terræ deducendo. Et illud fuit momentaneum, de quo Iob xiv cap., ubi supra. Secundum, virtualis repugnantia corporum motuum et aspectuum cœlestium, introductoria formalis repugnantia in hæc inferiora, propter quæ introducuntur inferiora bella, et hoc est continuum et successivum. A primo, theologice loquendo, dependet spirituale bellum et humanum, quod provenit ex repugnantia intellectus ad sensum. Nam Princeps Malorum persuadet et inducit ad vitia, ut deorsum emergat, ad [Romanos vii] Ephesios vi<sup>(\*)</sup>, Princeps autem Bonorum econtra ut ad superna elevet. A secundo autem dependet bellum corporale humanum, immo etiam spirituale humanum, naturaliter loquendo, ut infra proximo tractatu discutietur.

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*De Spirituali Humano Bello, secundum theologiam.*

[Cap. vii.]

Bellum Spirituale Humanum potest explicari theologice et moraliter. Theologice, est contentio exorta propter invidiam repugnantiam Diaboli contra rationabilem creaturam, habens fomitem a peccato primi parentis. Et de



hoc bello spirituali loquitur Apostolus ad [Romanos vii] Ephesios, vi cap., sic inquit, “Induite vos armaturam Dei ut possitis stare adversus insidias Diaboli.” Et illa armatura sunt virtutes et bona opera quibus homines armantur contra vitia, xi, q. iii, *qui resistit*. Insidiæ autem Diaboli sunt innumera- biles, nam, ut inquit Iohannes Papa, “Habet enim mille nocendi modos, nec ignoramus astutiam eius. Conatur namque a principio ruinæ suæ unitatem Ecclesiæ rescindere, caritatem vulnerare, sanctorum operum dulcedinem invidiæ felle inficere, et omnibus modis humanum genus pervertere ac perturbare. Dolet enim satis et erubescit caritatem, quam in cœlo nequivit habere, homines constantes ex luti materia in terra tenere. Vnde oportet, quantum fragilitati nostræ conceditur, ut omnes aditus nocendi eius versutiæ muniamus, ne mors ingrediat per portas nostras.” Hæc habentur xvi, q. ii, cap. *visis*. Sic alibi pulcherrime scribit Hieronymus ad Iovinianum, sic inquit, “Sic in malis atque peccatis semina sunt incentiva et perfectio Diaboli. Cum viderit nos supra fundamentum Christi ædificasse fœnum, ligna, stipulam, tunc supponit incendium. Ædificemus ergo aurum, argentum, et lapides pretiosos, et attemptare non audebit, quamquam et in hoc certe non sit segura possessio, sedet quippe leo in insidiis, ut in occultis interficiat innocentem, et vasa figuli probat fornax, homines autem iustos temptatio tribulationis.” Hæc sunt transumpta De Pœnit., di. ii, cap. *si enim*, circa medium. Alibi etiam scribit Alexander Papa in hæc verba, “Nam Diabolus non cessat circuire quærens quem devoret, et quærens quem ex fidelibus perdat, et maxime illos quos ardentiores in servitio Salvatoris eique familiares invenerit.” Hæc sunt transumpta iii, q. i, *nulli*, et cap. *verum*<sup>(1)</sup>, originaliter [Luçæ xi et v capp.]<sup>(2)</sup>; prima Petri v. Et habuit hoc bellum fomitem a peccato primi parentis, non ut a causa positiva, sed ut a causa sine qua non. Nam si non fuisset peccatum primi parentis, ad nihilum fuisset hæc pugna.

*De Spirituali Humano Bello, secundum moralem philosophiam.*

[Cap. viii.]

Moraliter autem intelligendo, et secundum semitam philosophorum loquendo, Spirituale Humanum Bellum est contentio exorta propter repugnantiam rationis ad sensitivum appetitum. Vbi sciendum quod secundum Philosophum, secundo De Anima, Anima habet quinque potentias, scilicet, vegetativam, sensitivam, appetitivam, intellectivam, et, secundum locum, motivam. Appetitiva dividitur in sensitivam et rationalem. Idem Philosophus, i Politicorum, quod anima dominatur corpori principatu disposito, id est in ordine ad servum, id est sicut dominus servo. Intellectus autem dominatur sensui principatu regali, id est in ordine ad liberos, hoc est dicere quod anima dominatur corpori sicut dominus dominatur servo. Intellectus autem dominatur sensui sicut superior subdito tamen libero. Vltcrius attendendum quod intellectus dicitur rationalis, quia in se ipso habet formaliter rationem, appetitus autem sensitivus dicitur rationalis, non quia in se ipso habeat rationem, quia sunt potentiæ distinctæ formaliter, sed dicitur rationalis quia in homine est aptus

natus obedire rationi, irrationalis autem, quia potest non obedire rationi, vel ponit exclusionem rationis formaliter. His præmissis, evidenter apparet quod appetitus sensitivus humanus aliquando obviat rationi, aliquando obedit rationi. Vbi obviat, est bellum et repugnantia. Vbi obedit, est pax et concordia. Exemplum patet in magno mundo ubi omnia inferiora sunt apta nata obedire superioribus. Hinc est quod inquit idem Philosophus, primo Metaphysicorum et secundo Cœli, necesse est hunc mundum esse contiguum superioribus lationibus ut omnis virtus inde regatur, et tamen aliquando non obediunt propter indispositionem materiæ, et inde fiunt aliqua præter intentionem agentium superiorum, ut monstra, sic sensitivus appetitus, ut inferior, aptus est obedire. Hinc est quod dicit idem Philosophus, secundo De Anima tractatu, de moto et de movente, si intellectus moveat appetitum sensitivum, et ipse eidem obediat, motus est naturalis, ac si sphæra superior moveret inferiorem. Si autem econtra, tunc motus non est naturalis ac si sphæra inferior moveret superiorem. Exemplum patet in monarchia civili, nam aliqui sunt subditi repugnantes principibus suis. Exempla huius repugnantiae tolle in continente et in incontinente. Nam et in continente appetitus sensitivus inclinatur in excessivum, utpote inordinatum cibum, potum, vel aliquid simile. Ratio discat illud fugiendum, ut nocivum, et tamen in continente vincit intellectus et ratio, et proprie continentia non est virtus moralis firmata, nam, ut inquit idem Philosophus, in virtuoso omnia consonant. Vnde cum, ex multis et frequentibus actibus, in appetitu sensitivo firmata fuerit promptitudo quædam, inclinans ipsum appetitum sensitivum in bonum, et conformiter rationi, tunc proprie est virtus. In incontinente autem patens est hæc repugnantia, sed ibi vincit appetitus sensitivus, nec illa dicitur vitium firmatum, donec ex frequentibus actibus ita assueverit inclinare in malum, quod sine aliqua repugnantia nunc semper inclinet. Hæc repugnantia proprie censetur bellum spirituale humanum, loquendo moraliter. De hac repugnantia etiam loquitur Apostolus ad Romanos, vii capitulo. "Video aliam legem repugnantem legi mentis meæ"; transumptive, xxxii, q. v, *si Paulus*. De hac etiam repugnantia scribitur vi di., *sed pensandum*; De constitutionibus, *nam concupiscentiam*. Et de hoc spiritali bello loquitur Gregorius, xxiii, q. i, *nisi bella*. In hac autem repugnantia ab adolescentia regulariter est inclinatio in malum, nam omnis ætas ab adolescentia prona est in malum. Genesis viii cap.; xii, q. i, *omnis ætas*. Et ratio consuevit multiplex assignari. Prima quia malum potest quis per se, bonum autem non sine gratia. Alia est propter fomitem originalis peccati impellentem ad malum. Alia quia facilius pervenerit ad malum quam bonum. Nam bonum consistit in medio essentialiter, vitia autem in extremitatibus, ad medium autem transitur unica via recta, ad extremum autem multipliciter. Alia quia plura sunt impedimenta boni quam mali. Alia quia non fit bonum nisi cum iudicio rationis, qua adolescentes parum vigent, propter offuscationem organorum corporalium. Et hanc credo veriore rationem. Hoc de Bello Spiritali, circa quod plura possent tractari. Sed prætermitto, quia transcenderent metas iuris, in quibus minus quam possibile sit intendere distendere.



*De Vniuersali Corporali Bello.*

[Cap. ix.]

Tertio, tractaturus de Bello Vniuersali Corporali, ipsius tractatum explicabo per quæstiones :

Primo, quo iure ortum et inductum sit bellum.

Secundo, quibus liceat indicere universale bellum, subiungendo contra quos.

Tertio, quæ sint aggregantia bellum, explicando, per modum summæ, actus licitos et illicitos personarum bellum aggregantium, et formando quasdam quæstiones circa ipsa.

Quarto, quæ sint personæ quæ artari possunt ad bellum, et quod de accedentibus non astrictis.

Quinto, de his spoliis quæ fiunt in bello, et aliis quibusdam quæ in bello fiunt.

Sexto, per modum tabulæ ad instructionem canonistæ, de quæstionibus contingentibus materiam belli. Vbicunque in Corpore Iuris Canonici tractatum fuerit per Glossatores et Doctores, remittam.

*Quo iure ortum habuit Bellum Vniuersale Corporale.*

[Cap. x.]

Redeo ad primum, et primo quæro quo iure ortum habeat Bellum Vniuersale Corporale. Solutio. Iure divino et iure gentium. Iure divino, et probatur Iosue viii ; primo Regum xvi capitulo. Iure gentium, ff. De iustit. et iure, l. *ex hoc iure*.

*Qualiter iure divino ortum habuit bellum universale corporale.*

Dixi quod bella orta sunt iure divino, ubi sciendum quod bella nedum domino permittente, immo positive concedente, inducta sunt. Et hoc demonstrari potest, nam omnis facultas tendens in bonum adeo positive nedum permissive derivatur. Sed facultas belli indicendi iusti tendit in bonum, ergo a Deo positive provenit. Probatur maior, nam "omne datum optimum et omne donum perfectum desursum est descendens a Patre [hominum] luminum," Iacobi i ; i, q. ii, *quem pio*. Probatur minor, nam indictio belli iusti et bellum iustum tendit in bonum, nam tendit in pacem et quietem universi. Hoc probatur auctoritate Augustini ad Bonifacium, sic inquietis ; "non enim bellum quæritur ut bellum exerceatur, sed bellum geritur ut pax quærat." Subdit, "Esto ergo bellando pacificus, ut eos quos expugnas ad pacis utilitatem vincendo perducas." Habentur xxiii, q. i, *noli*. Est igitur finis belli pax et tranquillitas universi. Ergo infertur a Deo originaliter et positive provenisse. Confirmatur. Nam omnis actus punitivus malorum a Deo provenit, sed indictio iusti belli est actus punitivus malorum et rebellium. Ergo a Deo positive provenit. Probatur maior. Nam scribitur, "mihi vindicta[m], et ego retribuam," [Proverbiorum xxii c.] ; [xxiii, q. i, cap. *item cum in Proverbiis*] ; et alibi, "mea est ultio et ego retribuam," Deuteronomii xxxii ; ad Hebræos x ; ad Romanos capitulo [xiii] xii. Probatur minor auctori-

tate Augustini, in Sermone De puero centurionis, xxiii, q. i, *paratus*, ver. *nam corripiendo*. Immo per hanc inductionem concludi posset theologicæ de necessario in universo fore malos et rebelles, nam maiestati divinæ insunt actus præmiativi bonorum et punitivi malorum, ut scribitur, "nullum bonum, etc." Tunc, illo præmisso, posset sic induci, posito actu necessario, ponitur obiectum terminativum illius actus. Hoc probatur per verba Philosophi libro ii De Anima, nam posito actu visionis ponitur obiectum visibile. Item et actu auditionis posito, ponitur obiectum audibile. Posito igitur a principio creationis mundi actu punitivo in Deo, necessario ponitur obiectum punibile, et tale est Malum, ut supra deductum est. Confirmatur primum principale. Nam omnis actus per quem tollitur nocendi facultas a Deo positive provenit. Sed indictio belli iusti est huiusmodi. Probatur hoc auctoritate Augustini, sic iniquentis, "Bella geruntur ut ad pietatis, iustitiæ societatem victis consulatur." Subdit, "nam cui licentia iniquitatis eripitur, utilius vincitur, quoniam nihil est infelicius felicitate peccantium, qua pœnalis nutritur impunitas, et mala voluntas, velut hostis interior roboratur." Hæc habentur xxiii, q. i, *paratus*, ver. *ac per hoc*. Confirmatur. Omnis potestas est a Deo, iubente vel permittente, ergo potestas bellica sic provenit, sed non solum permittente sed et iubente. Ergo iubente. Probatur principale, ad Romanos xiii; transumptive, xxiii, q. i, *quid culpatur*. Quid plura? Nonne hoc patet, inspectis mundi generationibus? Nam a principio creationis mundi usque ad tempora Noe Deus per se ipsum, et sine ministro, malos exterminabat, ut patet de Cain et Abel, et quibusdam aliis regibus, ut scribitur Genesis iv et v capitulis. Per se igitur bella induxit punitiva et malorum exterminativa. Infertur igitur ex præmissis bella iure divino inducta originaliter. Figuraliter, immo forte naturaliter, demonstrari posset. Nam ut iniquunt naturales, homo est parvus mundus, et sicut fit gubernatio in parvo mundo, sic in toto universali, similitudine tracta, ut inquit Philosophus viii Physicorum, ac in regimine naturali corporis constat quod ubi nullus est humorum excessus, nulla est rebellio repugnans conservationi et durationi naturali. Vbi autem humorum excessus propter inordinatum regimen, tunc pugna naturæ tendentis in conservationem contra excessum tendentem in destructionem, et in pugna aliquando sufficit naturalis potentia ad correctionem repugnantiae, aliquando est impotens, propter excessum morbi, et tunc est opus extrinseco remedio, utpote medicamine sapiente naturam veneni, repugnantis tamen morbo. Sic directe in magno mundo. Nam aliquando in regione et plaga mundi nullus est rebellium excessus, et tunc nulla pugna, immo uniformiter tendit ipsius gubernatrix Natura <sup>(1)</sup> conservationem. Aliquando est excessus rebellium, tendentium in destructionem gubernationis et conservationis, et tunc aliquando Natura per se corrigit, ut monitionibus, exhortationibus, et aliis placationibus, et tunc non est opus bello, nec medicamine venenoso. Aliquando in tantum excessit morbus quod opus est medicamine venenoso, penitus materiam morbi extirpante, et tale medicamen est bellum eradicativum et exterminativum malorum. Sic igitur in parvo mundo, recurrit <sup>(2)</sup> propter defectum virtutis interioris ad medicum, qui operatur reme-



dio extrinseco et venenoso, sicut in magno mundo gubernator generalis, qui est Altissimus Creator, et est medicus universi, tendens in ipsius conservationem et gubernationem, cum in tantum excreverunt humores tendentes in destructionem universi, vel partis eius, Dei iustitia [excessiva et ulterius importabilia] <sup>(7)</sup> respectu conservationis monarchiæ mundanæ, utitur remedio bellico, ut exterminet vitia et excessus, et discensia <sup>(7)</sup> reducat ad terminum temperamenti. Et, sicut in corpore humano isti humorum excessus fiunt circa membra singula corporis humani, et etiam distrosio <sup>(7)</sup> insurgit, aliquando propter humoris unius excessum, quandoque alterius, sic in universo, circa singulas regiones et mundi plagas, quæ sunt membra magni mundi, fiunt hi vitiorum excessus, quæ repugnant ipsius gubernationi, et aliquando in uno, aliquando in alio, secundum vitiorum varietates. Et sic contingit plagas mundi aliquando infirmari propter vitiorum excessum, quæ quandoque sic excedunt quod opus est medicamine eradicativo, quo eradicabuntur aliquando boni cum malis, sicut medicina evellit etiam mixtim bonos cum malis. Immo aliquando propter dictum excessum penitus exstinguuntur, ut mors contingit etiam in singularibus suppositis, quod patet ex sensatis, nam regiones infinitæ propter hæc sunt penitus extinctæ et inhabitabiles redditæ. Infinita possent recitari exempla, hoc idem contingit in genealogiis et in regiminibus, quæ etiam minuuntur et penitus exstinguuntur. Et licet hæc dicta sint sic figuraliter, tamen textibus legis divinæ apertissime demonstrantur, nam, ut legitur Genesis xix cap., propter excessivum morbum Sodomæ Deus usus est medicamine bellico et eradicativo contra Sodomam, Gomorram, Seboim, Segor, et Oleale, licet duæ perierint propter vicinitatem, ut De Pœnit., di. i, cap. *sed continuo*; et cap. *clerici*, De excessibus prælat. ; et in Authent., ut non luxu. contra naturam, circa fin. coll. vi. Possent induci innumerabilia exempla. De isto etiam medicamine bellico, scribitur Iosuae viii cap., nam ibi Dominus Noster iubet [ad Iesum nave] ut constituat sibi retrorsum insidias, id est insidiantes bellatores, ad insidiandum hostibus. Et Augustinus, in libro Quæstionum super verbis Iosuae, "Iusta autem bella definiri solent quæ ulciscuntur iniurias," id est delictorum excessus. Et subdit, "sic gens vel civitas plectenda est quæ vel vindicare neglexerit quod a suis improbe factum est." Subdit, "sed hoc genus belli sine dubio iustum est quod Deus imperat, qui novit quod cuique fieri debeat." Non dicit "permittit," immo "imperat." Subdit "in quo bello dux exercitus, vel ipse populus, non tam auctor belli quam minister Dei iudicandus est." Et sic clare demonstratur Deum, ut medicum altissimum, et conservatorem universi, bella imperare, ut eradicentur delicta. Hæc habentur transumpta xxiii, q. ii, *Dominus Noster*. De hoc etiam bello et medicamine eradicativo scribitur i Maccabæorum v cap., et Deuteronomii cap. ii; ubi ex mandato Dei filii Israel bella gerunt[ur] contra Armoræos, quod etiam tractat Augustinus in libro Numerorum, et habetur transumptum xxiii, q. ii, cap. *notandum sane*. De hoc etiam scribitur Iudicum v cap., ibi "elegit Dominus nova bella." Loquitur de his eradicantibus vitiorum excessibus. Scribitur etiam [Iosuae] Isaïæ xxx, 'Et bellis præcipuis expugnabit,' tan-

quam bellator. De his eradicantibus scribitur etiam i Maccabæorum iv cap., "Confortamini et bellate." Scribitur etiam Ieremiæ xx cap., "Dominus est mecum tanquam bellator." Hieronymus super Sophoniam pulcherrime hoc describit, dicens, "Si quis fortitudinem latronis vel piratæ enervat et infirmos reddit, prodest illis sua infirmitas, debilitata enim membra quibus prius non bene utebantur a malo opere cessabunt." Conclusio est Hieronymi quod sanantur vitiosi si eruatur morbus quo membra infecta in malum disponebantur, et hoc fit bello eradicativo. Hæc habentur xxiii, q. iii, cap. *si quis fortitudinem*. Hoc aperte demonstratur per id quod scribitur Lucæ [vii] xii, et ad Hebræos xii<sup>(9)</sup> dicit Dominus, "Servus qui nescit voluntatem domini sui et facit digna plagis, vapulabit paucis, servus autem qui scit voluntatem domini, et facit digna plagis, vapulabit multis." Excedens igitur recepit plagas a Domino. Hæc sunt transumpta xxiii, q. iv, cap. *ea vindicta*. Hinc legitur quod Elias multos affecerit morte prima manu, et igne divinitus impetrando, iv Regum i cap.; et cap. *ea vindicta*. Deinde xxiii, q. [v] iv, sic scribitur de aliis tempore veteris legis, iii Regum xvii et xviii cap.; sic scribitur quod verbis Petri, apostolorum principis, Ananias et uxor eius mortui ceciderunt, Actuum iv capitulo. Transumptive habetur xvii, q. i, *Ananias*; xxiii, q. [v] iv, *ea vindicta*, in fine. Et de hoc bello eradicante, pulchre loquitur Gregorius ad Brunehildam Francorum reginam, sic inquit, "Ne si, quod non credimus, divinæ ultionis iracundia sceleratorum fuerit actione commota, belli pestis interimat quos delinquentes ad rectitudinis viam Dei præcepta non revocant"; xxiii, q. iv, *si [vos] quos*. Nonne inquit Dominus ad Moysen; "maleficos non patieris vivere", Exodi xxii capitulo? Moyses etiam, qui legem acceperat a Domino, cultores idoli morte punivit, Exodi xxxii capitulo. Samuel etiam mandato Domini Agag regem pinguissimum in frusta occidit, i Regum xv capitulo. Transumpta habentur xxiii, q. v, cap. *hinc apparet*. Dominus etiam Ægyptios fluctibus submersit, Exodi xiv cap.; Israelitarum cadavera prostravit in Eremo, Numerorum xiv capitulo. Transumpta habentur xxiii, q. v, *quid ergo*. Infinita possent super hoc demonstrando induci exempla veteris et novæ legis divinæ, sed hæc sufficiant ut ex his narratis sufficiat concludere bella originaliter ortum habuisse ex iure divino, et non solum Dei permissione, immo et positive ab ipso, ut mundi gubernatore et medico vitiorum eradicativo, propter salutem et mundi conservationem, et cum in hunc finem tendant hæc bellica remedia, ut supra clare deductum est, propter hanc autem [distrasiam]<sup>(9)</sup> et vitiorum multiplicorum excessum in universi destructione progrediente, ex sensatis apparet altissimum Creatorem, temporibus retroactis, et hoc eradicativo remedio usum fuisse, nam regna et mundi regimina quam plura sunt penitus enervata et quam plura remissa. Quid de Troianorum [assensu]<sup>(9)</sup>? Quid de Græcorum imperio? Quid de Romanorum universo dominio? Partes Italiæ temporibus nostris febriunt et subiciuntur examini. Medicina paratur alicubi minorativa, alicubi eradicativa, exercitante ad summum, quorum habitudines sunt fallaces, iuxta doctrinam peritissimi Hippocratis, primo Aphorismorum. Hanc regionem deduxerunt ad motum, ut Altissimus con-



gruam exhibeat medicinam, de cuius humores in quanto et quasi in temperamento plus discant, <sup>(7)</sup> cumque ex pulmentudine fiunt evacuationes, sanet, iuxta doctrinam eiusdem<sup>(8)</sup>. Hæc autem conclusio, videlicet quod bella proveniant a Deo, positive et originaliter demonstrari posset, attento divinæ maiestatis uniformi et perpetuo instrumento. Nam altissimus omnium Creator, mediante cœlesti machina, in hanc terrestrem machinam naturaliter operatur, licet supernaturaliter. Immediate ubi vult spîret et influat, sed naturaliter loquor, iuxta dictum peritissimi Philosophi, primo Meteororum, et secundo Cœli, necesse est hunc mundum contiguum esse superioribus lationibus, ut omnis virtus inde regatur. Influit igitur Altissimus naturaliter in hæc inferiora, mediante cœlesti et sphærico corpore, illud autem totum corpus operatur, mediante motu et lumine, ut inquit idem Philosophus. Et, quia in ipsa tota machina cœlesti sunt partes diversarum virtutum in influendo, ut puta sphærarum varietas, stellarum errantium et fixarum diversitas, a quibus propter varietatem naturarum et motuum dependet effective omne genitum et corruptibile ; idcirco quælibet contrarietas et naturarum diversitas, repugnantia hic inferius insurgens, dependens est desuper. Ex quo statim infertur quod, cum repugnantia et difformitas sunt inductoria bellorum, quod bella inde oriantur, immo experientia docet quod, propter uniformitatem et difformitatem aspectuum tempore nativitatis, insurgunt inter homines naturales dilectiones et naturales inimicitiae. Hoc quilibet experitur, nam quis diligit statim cum viderit, nullis meritis præcedentibus, et sic odio habebit, nullis demeritis præcedentibus. Sic inter civitates et villas et castra insurgunt dilectiones et odia naturaliter, propter uniformitatem et difformitatem aspectuum tempore constructionis earum, et sic insurgunt odia et bella, influentia cœlesti, sic et amicitia et paces, sic inter provincias. Hæc autem cœlestis natura, mediante motu, est productiva generationis et corruptionis, in his inferioribus augmenti et diminutionis, nedum in singularia supposita, immo in singulas mundi plagas, nam ex hac superna natura plagæ habitabiles factæ sunt inhabitabiles, et econtra. Nam, iuxta doctrinam Philosophi, ubi mare fiet aridum, ubi aridum fiet mare, ex hac naturarum repugnatione ac dispositionum, ex qua rixæ, contentiones, bella particularia et universalia insurgunt. Hæc, propter motuum et aspectuum varietatem, quædam exaltat, quædam exstinguit, et quædam deprimat, mutat mundi regimina universalia et particularia. Et hoc demonstrari potest, nam, posita causa sufficienti productiva alicuius effectus, necesse est illum effectum produci, nisi adsit aliquod extrinsecum impedimentum productionis, sed natura cœlestis continue difformatur motu et aspectu, et ipsius partes sunt difformes ex sui natura in influendo. Ergo necesse est produci hos effectus repugnantes et difformes cum non sit quod impedire possit, et per hoc inferri posset quod naturaliter necesse est esse bella, nec aliter procederet naturaliter mundi gubernatio. Protestor tamen quod licet hoc cœlestis natura operetur in hæc inferiora, non tamen per se et directo intellectu humano, immo durat libertas arbitrii, ut in cap. *Nabuchodonosor*, xxiii, q. iv, et cap. *de Tiriis* ; et De Pœnit., di. ii, cap. *sicut*

*enim* ; et Philosophus iii Ethicorum. Sed operatur in organo virtutum sensitivarum, quæ recepta influentia administrant intellectum, sic per indirectum influit. Hinc est quod scribitur in libro Centum Verborum, “ anima sapiens dominatur astris.” Sed quia hoc tractare nimis elongatur a terminis iuris, non ulterius circa hanc deductionem insisto, sed sufficiat illatum ex prædictis et demonstratum, bella provenisse a Deo positive et effective, licet ex hoc ultimo inferatur, non immediate, sed mediante machina cœlesti, naturaliter operando.

[Cap. xi.]

*Qualiter iure gentium ortum habuerit bellum universale corporale.*

Dixi secundo quod bella cognita sunt iure gentium. Hic tamen considero quod, licet dicant iura quod bella sint introducta iure gentium, ut Isidorus, i di., *ius gen.* ; et Hermogenianus iuriconsultus, in l. *ex hoc iure*, ff., De iustit. et iure ; tamen credo quod bella ortum habuerint non solum ex æquitate naturalis humanæ intelligentiæ creatæ, immo primordialiter ex dispositione naturæ naturantis, non solum influentis secundum actus humanos, immo super quibuscunque animantibus et etiam inanimantibus, ut sit verum dicere quod bella habeant ortum a iure naturali, etiam ut distinguitur a iure gentium. Quod qualiter differat probat textus, in l. i, § *ius gen.*, et § *ius naturale*, et l. *ex hoc iure*, ff. De iustit. et iure ; et i di., *ius naturale*, cum sua glossa, et cap. *ius naturale*. Quod hoc sit verum sic ostenditur. Ex principiis naturalibus cuilibet enti naturali creato est insita inclinatio naturalis ad exclusionem cuiusque repugnantis suæ naturali dispositioni. Hoc patet inducendo in singulis naturalibus simplicibus et mixtis, nam aquæ insitum est resistere igni, et e contra, propter repugnantiam qualitatum. Sic in singulis elementis, sic in mixtis, induci posset maxime hoc quod patet in brutis, ubi, ex naturali repugnantia complexionum, unum inclinatur naturaliter ad occisionem alterius, et e contra, sic in rationali creatura insita est inclinatio a natura, etiam circumscripto intellectuali dictamine, ad profugandum quodcunque sibi repugnans. Quod hoc sit verum, ratione probatur, nam natura omnium creatorum productiva non minus debuit esse sollicita in conservatione rationabilis creaturæ quam ceterorum productorum, cum ipsa sit nobilior, ut cap. *cum infirmitas*, De poen. et remiss. ; et l. *sancimus*, C. De sacrosanctis eccles. ; et cap. *hæc imago*, xxxiii, q. v ; et propter ipsam, ut finem, omnia infra globum lunarem sint producta, ut l. *in pecudum*, ff. De usuris. Si igitur natura induxit inclinationem naturalem in ceteris creatis ad quæcunque sibi contraria profuganda, quanto magis hoc debuit in rationabili creatura ? Hoc idem sensualiter patet per singula supposita discurrendo, nam quilibet hoc in se ipso experitur, si hoc ex principiis naturalibus hominibus insitum est, ergo ex hac inclinatione naturali primordialiter habuit ortum bellum, cum bellum, ut supra descriptum est, sit contentio exorta propter tollendam repugnantiam. Infertur ergo quod illa contentio quæ oritur propter tollendum dissonum et repugnans conservationi suæ fundamentaliter habet ortum a principiis naturalibus, et sic in iure naturæ,



prout distinguitur a iure gentium. Sed statim dices, hæc destruunt textus qui dicunt ex iure gentium oriri, ubi advertendum quod, licet a iure naturali inducta sit illa inclinatio naturalis, circumscripta naturali intelligentia, tamen inclinatio illa regulatur per dictamen rationis et intelligentiæ naturalis, sicut dicimus in singulis actibus qui debentur hominibus naturaliter, circumscripto intellectu, utpote inclinatio ad cibum et potum et coitum. Ista hominibus competunt naturaliter, et tamen in homine regulariter dictamine rationis, quod non est in brutis, quæ carent illo dictamine. Sic igitur credo fuisse mentem illorum textuum, videlicet quod regulatio illius inclinationis, introductæ a principiis naturalibus, insurgat ex iure gentium, id est ex æquitate generali naturalis intelligentiæ, sed ipsa inclinatio est de iure naturali. Hoc probat glossa in l. *ex hoc iure*, ff. De iustit. et iure; et i di., *ius gent.* Nam glossa utrobique super verbo "bella" exponit iusta; et sic intelligit de inclinatione regulata per dictamen rationis. Et licet dicant textus quod ex iure gentium insurgunt bella, non tamen credo falsum dicere bella, id est illas regulatas inclinationes, habere ortum a iure civili et a iure canonico. Nam ius civile et ius canonicum non dicunt aliam æquitatem quam sit æquitas a iure gentium. Immo sunt<sup>o</sup> ipsa æquitas iuris gentium, nam omne ius consistit in quadam rectitudine, et inde ius dictum est, ut i di., *ius generale*. Sed ius civile et canonicum sunt rectitudo vitæ et æquitas iuris gentium. Sed addunt supra rectitudinem illam quandam explicationem, nam ius legale et canonicum habent specificare et explicare rectitudinem et æquitatem iure gentium, quandoque eam interminando per modos congruos, quandoque applicando ad varios actus, quandoque determinando per varios eventus. Hæc omnia probantur per textum in l. *ius civile*, ff. De iustit. et iure. Nam dicit ibi textus, "Ius est quod nec in totum a naturali vel gentium recedit, nec per omnia ei servit. Itaque cum aliquid addimus vel detrahimus iuri communi, ius proprium est, id est civile facimus." Est ergo verum dicere quod bella sunt de iure civili et canonico, id est de ipsa rectitudine, quæ est ius civile et canonicum. Nec obstant textus statim allegati, quia illa rectitudo, nihilo addito vel detracto, ius gentium nuncupatur. Et sic loquuntur iura statim allegata, sed, cum aliquid additum vel detractum est, tunc civile vel canonicum nuncupatur, nulli tamen dubium quin ius civile et canonicum circa bella supra dictamen rationis generalis aliquid addant. Ex prædictis infertur quo iure bella orta fuerunt.

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*Quibus primo et principaliter, et quo iure, et contra quos, bellum indicare liceat universale.* [Cap. xii.]

Secundo quæro quo iure licitum sit Ecclesiæ indicare bellum contra infideles, et invadere terras eorum, et propter hoc indulgentiam concedere, cum iura in contrarium disponere videantur, nam nihil ad nos de his qui foris sunt, ii, q. i, *multi*. Etiam quia origine possessiones et iurisdictiones sunt apud eos. Nam Deus per totam rationabilem creaturam hoc produxit, nam apud bonos

et malos facit solem oriri, Matthæi v et vi ad finem ; etiam quia ad fidem cogendi non sunt, cum omnes alii non incorporati sint relinquendi arbitrio suo, xlv distinct., *de Iudæis*. Immo, quod plus est, dimitti potest infideli iurisdic-  
 dictio super conversos ad fidem, dummodo non nimis gravet, prima ad Timo-  
 theum, vi capitulo. Secundo loco, ut clare liqueat, est attendendum quod hic  
 oportet primo præmittere quæ tetigi in materia represaliarum in principio,  
 scilicet unde Ecclesia habuerit iurisdictionem, et etiam unde Imperator, quæ hic  
 non præmitto quia ibi plene tactum fuit. Quo sic supposito, oportet etiam atten-  
 dere quod in eadem civitate sub eodem rege sunt duo populi, et secundum duos  
 populos duæ vitæ, et secundum duas vitas duo principatus, et secundum duos  
 principatus duplex iurisdictionis ordo. Eadem civitas est ecclesia, unus Rex  
 est Christus, duo populi sunt clerici et laici, duæ vitæ, spiritualis et carnalis,  
 et duo principatus, Sacerdotium et Imperium, tamen unum est principale,  
 scilicet Pontificatus. In quod fit alterius resolutio, alias frivole demonstraret  
 Philosophus xii Metaphysicorum, concludens unitatem Creatoris, sic demon-  
 strans ; multitudo principatuum, mala entia, volunt male disponi, unus ergo  
 princeps, sic directe in proposito, etiam quia in quolibet entium genere est  
 dare unum primum, quod sit metrum et mensura omnium aliorum, ut idem  
 Philosophus. Sic in monarchia tota est devenire ad primum, ergo sic etiam  
 in naturalibus est devenire ad primum movens immobile, ut idem Philosophus,  
 Physicorum vii et viii. Tale non potest esse Imperium respectu Pontificatus.  
 Prætermitto infinita. Sunt hæc allegabilia. Sufficiat ergo inferre quod unus  
 est Dominus orbis, vii, q. i, *in apibus* ; ix, q. iii, *cuncta per mundum*, et cap.  
*per principalem* ; ff. Ad. leg. Rhod. de iact., l. *deprecatio*. Et iste est Papa.  
 Et hic non solum super fideles, immo etiam super infideles habet iurisdic-  
 tionem, quod luce clarius demonstratur, nam Christus super omnes habuit pote-  
 statem, unde in Psalmo : “ Deus iudicium tuum regi da.” Si Christus habuit,  
 non fuisset diligens paterfamilias, si, Petro constituto vicario suo, curam non  
 dimisisset, quod nefas est dicere. Etiam Petro tradidit claves regni cœlorum,  
 dicens, “ Quodcunque ligaveris, etc.” Matthæi xvi. Et alibi, “ Pasce oves  
 meas,” Iohannis ultimo. Sic igitur Papa de iure habet iurisdictionem super  
 infideles, licet non de facto. Hinc est quod si gentilis, habens solum legem  
 naturæ, peccat contra legem naturæ, puniri possit per Papam. Nam scribitur  
 Genesis xix cap. quod Sodomitæ puniti sunt a Deo, ergo et Vicarius Dei hoc  
 poterit. Idem etiam si colant idola, nam naturale est Creatorem colere et non  
 creaturas. Item etiam poterit punire Iudæos, si faciant contra legem suam  
 in moralibus, et non puniuntur a prælatis suis. De christianis non est dubium  
 quin punire possit, si faciant contra legem evangelii. Ex quibus infertur quod  
 Papa, tanquam verus Princeps, potest bellum indicare infidelibus, et indul-  
 gentias concedere propter recuperationem terræ sanctæ, et maxime terræ con-  
 secratæ nativitate Christi, habitatione et morte eiusdem, ubi non colitur Chri-  
 stus sed Mahometus. Item terra sancta victa fuit post mortem Christi iusto  
 bello per Imperatorem Romanum, qui post spoliatus fuit per infideles. Idcirco  
 licitum est Papæ recuperare ratione principatus quem obtinet. In aliis autem



terris quæ non sunt consecratæ, nec Imperium vel Ecclesia habuit iurisdictionem, de facto potest Papa facere præceptum quod non molestant christianos subditos. Alias potest eos per sententiam privare iurisdictione sua, et per hoc quæ, ut in pluribus tracta sunt de his, quæ notavit Innocentius, De voto, *quod super his*. Patet solutio ad primo quæsitum, scilicet de iustitia belli indicti ab Ecclesia contra infideles, ex quo infertur iustificatio belli indicti per Imperatorem contra hostes.

*Evidentiale. Et discutitur qui sunt Imperatores contra quos bellum indicere liceat.*

[Cap. xiii.]

Vbi sciendum est quod duo sunt populi, scilicet populus Romanus et extraneus. De populo Romano, primo sunt omnes qui in totum obediunt Imperio Romano, nam populus accipitur pro toto Imperio, ut lex Romana, Ad municipalem. Quidam non obediunt in totum, sed in aliquibus, ut quia vivunt legibus Imperii et fatentur ipsum dominum orbis, ut sunt civitates Lombardiæ, et similes, et isti sunt de populo Romano. Nam cum in aliquibus iurisdictionem exerceat, ut l. *si prius*, De aqua. pluv. arc. ; et ibi notandum. Quidam sunt populi qui nullo modo obediunt Imperatori, nec vivunt Imperii legibus, sed dicunt se hoc facere ex privilegio, ut sunt Veneti, quia asserunt se hoc facere ex privilegio. Et isti etiam sunt de populo Romano, qui præcario hoc tenent ab Imperatore, et ipse revocare potest quandocunque voluerit, ut l. *si quis in principio*, ff. De legat., iii. Præterea illud privilegium eis concessum debet esse accommodatum ut non priventur civilitate Romana, ff. De captivis, l. *in bello*, § *si quis servum*. Quidam sunt populi qui non obediunt Imperatori, et asserunt hoc sibi competere ex contractu, ut sunt provinciæ subditæ Romanæ Ecclesiæ, quæ asserunt sibi competere ex donatione Constantini et aliorum Imperatorum, et isti etiam sunt de populo Romano, nam Ecclesia ibi exercet iurisdictionem quam habebat Imperium, unde non desinunt propterea esse cives Romani. Idem dico de regibus qui non fatentur se subditos Imperatori, ut rex Franciæ, Angliæ, Hispaniæ, et similes, qui asserunt hoc sibi competere ex privilegio vel præscriptione. Et per hoc infero quod omnes gentes fere quæ obediunt sanctæ matri Ecclesiæ sunt de populo Romano, et si quis diceret Imperatorem non esse dominum, diceret contra textum Evangelii, cum dicitur "exiit edictum a Cæsare Augusto, etc." Populi autem extranei sunt qui non fatentur Imperatorem dominum, ut Græci, qui dicunt suum Imperatorem esse Dominum. Item Tartari, qui dicunt Grancanem esse dominum, et Saraceni qui dicunt suum esse dominum. Inter istos tamen est differentia, nam quidam sunt nobis foederati, ut Græci contra Turcos, quidam cum quibus habemus pacem, ut sunt Tartari, nam mercatores nostri vadunt ad illos et sui ad nos, quidam sunt cum quibus nihil facere habemus ut Iudæi, quidam sunt cum quibus habemus guerram actualement ut sunt Saraceni, et hodie, cum Turcis. Infertur ergo quod, cum Imperator sit princeps sæcularis, superiorem non habens in sæcularibus, nisi forte, ut

dixi, quod ipse potest indicare bellum contra hostes suos, et qui sint, post statim patuit. Et hoc est bellum de quo loquitur lex *hostes*, ff. De captivis ; et De verbor. significatione. Et in hoc vindicat sibi locum bellum, ergo indicitur a populo Romano vel Imperatore, adeo quod, si Imperator indicat bellum aliquibus civitatibus Italiæ rebellibus, vindicat sibi locum effectus publici belli, quia idem si repugnetur Officiali Imperatoris, vel Papæ, non propter Imperatorem vel Papam.

[Cap. xiv.]

*An aliis a principe bellum indicare liceat universale?*

Et quæro numquid aliis a principe liceat bellum indicare universale. Solutio. Non licet sine principis auctoritate, nam nemini sine principis licentia licet arma portare, C. Vt usus armorum, in rubro ; et glossa in Authent., De mand. princ., coll. iii ; in Authent., De armis, coll. vi. Et est ratio, nam nemini sine principis licentia licet violare iura principum. Ius autem violat qui, sine iuris sollemnitate manu regia, ius sibi dicit, ubi habeatur copia ius dicentis, idcirco sine eius auctoritate non licet. Soli ergo Principi competit sua auctoritate, cum non habeat superiorem, ad quem recurrat pro iustitia consequenda. Hodie tamen quia sunt populi non recognoscentes superiorem de facto, non requiritur superioris auctoritas, cum non recognoscant. Immo tota die bella indicuntur a populo contra populum, nullo alio requisito.

[Cap. xv.]

*An bellum motum per Imperatorem contra Ecclesiam sit iustum, et an teneantur subditi ei in hoc obtemperare?*

Secundo quæritur numquid bellum quod movet Imperator contra Ecclesiam sit iustum, et teneantur subditi ei in hoc obtemperare. Videtur quod sic quia sit principis auctoritate vel mandato, ergo, etc. Etiam, quia duæ sunt iurisdictiones, De iudiciis, *novit* ; Qui filii sint legitimi, *causam*, et cap. *per venerabilem* ; De appell., *si duobus*. Etiam quia in pertinentibus ad armorum usum subditi tenentur obedire Imperatori, etiam schismatico, [i] xi, q. iii, [Iulii] *Iulianus*. Solutio, contrarium est verum, nam Imperator est advocatus Ecclesiæ, et tenetur eam defendere, idcirco non potest eam impugnare, De natis ex libero ventre, cap. unico ; De restit. spol., *conquerente*. Immo indicendo bellum contra Ecclesiam meretur perdere privilegium indicendi bellum, cum illo abutatur, xi, q. iii, *privilegium* ; De decimis, *suggestum* ; ut puniatur in quo deliquit, De translatione, *quanto*, § *ne autem*. Immo talis pertinacia in Principe non distat ab hæresi, De hæreticis, *excommunicamus*, i, § i ; et ibi notandum. Etiam quia Papa superior est, nam examinat Imperatorem ipsum, reprobatur et deponit, De elect., *venerabilem* ; De re iudic., *ad apostolicæ*, lib. vi. In hoc igitur casu non tenentur subditi iuvare Imperatorem contra Ecclesiam, immo econtra. Et potest Papa absolvere eos a vinculo fidelitatis, xv, q. vi,



*nos sanctorum*, et cap. *iuratos* ; et nota De hæreticis, *excommunicamus* ; i, De pœnis, cap. ult. ; Et de hoc per Hostiensem, De resti. spoliatorum, *olim*.

*Quid iuris, cum Papa movet bellum contra Imperatorem ?*

[Cap. xvi.]

Quarto quæritur quid econtra si Papa indicat bellum contra Imperatorem ? Solutio patet per præcedentia, nam si Papa indicat bellum contra Imperatorem schismaticum, hæreticum, vel alias usurpantem iura et libertates ecclesiarum, omnes fideles tenentur iuvare Papam, et etiam vassalli Imperatoris possunt absolvi a iuramento quo tenentur, vel declarari non teneri, ut cap. *iuratos*, et cap. *nos sanctorum*, xv, q. vi.

*De aggregantibus bellum, et ipsum perficientibus.*

[Cap. xvii.]

Tertio restat videndum de aggregantibus bellum, et ipsum perficientibus, et quæ etiam in ipso fieri debeant.

*De legione et cohorte, et qui et quot numero in eis requiruntur.*

In bello sunt legio, et habet vii millia c pedites, et septingentos xix equites, sunt cohortes, et quælibet cohors xx alas. Milliaria habet pedites mille cv, equites cxxxv. Quinquagenaria habet quingentos quinquaginta quinque pedites, et equites lxvi. Ita notat glossa, ff. De his qui not. infam., l. ii. Hæc igitur et dux et ordo faciunt bellum, sumendo bellum pro multitudine apta et ad bellandum præparata, non autem pro actu bellandi. Duo tamen principaliter fundant bellum, scilicet arma et vires. Hæc dividuntur in tres partes, equites, pedites, et classes. Nam equitibus campi, classibus maria et flumina peditibus colles, urbes, plana abrupta, servantur. Hinc infertur quod pedites magis sunt necessarii reipublicæ quam equites, quia possunt undique prodesse.

*Qualiter milites se debeant habere in bello, et cui obediant, et a quibus abstinere præcipiuntur ?*

[Cap. xviii.]

Milites autem in bello sic se habere debent, ut servant iuramentum quod præstiterunt, nam iuraverunt se strenue omnia facturos quæ præceperit Imperator et nunquam deserturos militiam nec mortem recusaturos pro defensione reipublicæ, ut ff. Ex qui. caus. maiores, l. pæn. ; et C. De his qui non implet. stipend., l. i, lib. x. Eorum ducibus debent obedire, ut l. *collatores*, in principio. Nam cum a Republica amantur et aluntur, solis debent insistere utilitatibus publicis, et esse in numero militiæ, ut armorum quotidiano exercitio ad bella se præparent, ut l. *milites*, C. De re militari. Et sic debent ducibus

obtemperare quod, si contra præceptum eorum aliquid fecerint, etiam bene, nihilominus capite puniuntur, ff. De re milit., l. *desertorem*, § *in bello*. Abstinere debent ab agrorum cultura, animalium custodia, mercimoniorum quæstu. Aliena non peragant negotia, ad civiles curas non accedant, alioquin militia et eius privilegiis nudabuntur, C. De re milit., l. *nemo milites*, et l. *qui milites*; C. De locat. et cond., l. *milites*; C. De procur., l. *militem*. Non emant prædia ubi militant, et tempore quo militant, etiam nec alieno nomine, alioquin fisco vindicantur. Si tamen ante missionem non molestantur, post non inquietabuntur. Fallit illa regula ubi fiscus distrahat eorum bona paterna, et ubi ex hæreditate quærent. Hoc autem inductum est ne studio culturæ a militia avocentur. Hæc habentur ff. De re milit., l. *milites*.

[Cap. xix.]

*Quæ pertineant ad officium ducis belli?*

Ad ducem autem belli pertinet militibus parcissime commeatum dare, equos militares extra provinciam duci non permittere, milites in castris retinere, ad armorum exercitationem producere, ad opus privatum, piscatum, venatum, non mittere, claves portarum suscipere, vigiliis circumire, frumentationibus commilitonum interesse, frumentum probare, mensuræ fraudem coercere, delicta castigare, querelas commilitonum audire, valetudinarios inspicere. Hæc habentur in l. *officium*, ff. De re militari. Ad eius etiam pertinet officium in virentes fluminis ripas legionem ponere, et ut nullus omnino aquam fluminis polluat, neve abluendo equorum sudorem publicos oculos maculet, sed procul in inferioribus partibus fluminis id facere permittat. Hæc habentur C. De re milit., l. *ingentis*. Ad ipsius etiam officium pertinet castra ponere ubi lignorum, pabuli, aquæ copia habetur, et, ut diutius commorandum sit, loci salubritas eligatur, ne mari sit vicinus, aut altior locus qui ab adversariis captus possit efficere. Considerandum etiam ne torrentibus inundari consueverit campus. Hæc Vegetius, De re milit., lib. i, cap. xx. Ad eius etiam officium pertinet secundum numerum militum munire castra, ne maior multitudo constipetur, neve paucitas in latioribus ultra quam oportet cogatur extendi. Ad bonum etiam ducem pertinet locum in quo dimicandum est noscere, qui quanto superior fuerit utilior iudicatur. Quod si victoriam de peditibus sperat contra milites hostium, loca inæqualia, aspera, montuosa debet eligere, si autem e contra, loca plana, patentia, neque silvis neque paludibus impedita. Hæc Vegetius lib. iii, cap. xiii, De re militari. Ad officium ducis pertinet de contractibus et delictis militum cognoscere, quod etiam pertinet ad specialem magistrum militum, ut l. *magisteriæ*, C. De iurisd. omn. iudic.; et l. *tam collatores*, C. De re militari.



*Qualiter varie puniuntur milites prout varie delinquant ?*

[Cap. xx.]

Varie autem puniuntur milites ut varie delinquant. Nam aut committunt delicta propria aut communia. Et in propriis puniuntur pœna militari, et augetur pœna gradu sæpe militiæ, ut l. ii, ff. De re militari. Punitiones autem sunt pecuniaria castigatio, munerum interdictio, ignominiosa de exercitu missio, gradus deiectio. In metallum autem, vel opus metalli, non deputantur, sed decapitantur, non enim pro milite sed pro hoste reputatur, ff. De re milit., l. iii, § i et § *is qui*, et l. *proditores*. Capite autem puniuntur qui præposito manus intulerint, qui inobedientes fuerint, qui spectantibus ceteris prior fugam arripuerit, exploratores qui secreta nuntiant hostibus, caligatus qui metu hostium infirmitatem simulavit, qui commilitonem gladio vulneravit, qui sine causa se vulneravit, vel mortem sibi conscivit. Secus si vitæ tædio, vel doloris impatientia, nam tales infamia notantur, per vinum autem vel lasciviam lapsis militia mutatur. Qui non defendit præpositum suum, cum potuit, capite punitur. Ei qui non potuit parcitur. Hæc habentur ff. De re milit., l. *omne delictum*, et l. iii, § *fin*. Item qui explorationi obviavit, hostibus insistentibus, aut qui de fossato recedit, capite punitur, etiam si rem bene gesserit, ff. De re milit., l. iii. Item miles turbator pacis capite punitur, ff. De re milit., l. iii. Item si concitavit atrocem seditionem. Desertor tempore belli capite punitur, tempore pacis equitis gradu repellitur, pedes militiam mutat, ff. De re milit., l. *non omnes*. Non omnes tamen desertores puniendi sunt æqualiter, sed haberi debet ratio gradus, ordinis, stipendiorum, et aliarum circumstantiarum. Qui excessit spatium commeatus, ut emansor vel desertor reputatur. Habetur tamen ratio dierum quibus tardius vel citius rediit, vel si impedimento aliquo detentus, ff. De re milit., l. iii, § *fin*., et l. *qui commeatus*, et l. *non omnes*. Habetur etiam ratio ante actæ vitæ. Emansor est qui diu vagatus a castris ad ipsa rediit, desertor qui per prolixum tempus vagatus ad castra reducit, ut l. iii, § *emansor*, ff. eod. titulo. Desertor, si in urbe inveniatur, capite punitur, alibi si ex prima desertione captus iterato deserat, capite punitur, ff. eod. tit., l. *non omnes*. Desertorum defunctorum bona confiscantur, C. De re milit., l. iv.

*De fortitudine, et ipsius natura, et quæ fortitudo dicatur moralis, et quæ non, et quæ fortitudo bellum ducat ad finem rectum, et quæ non.* [Cap. xxi.]

Sed quia dictum est quod fortitudo et arma fundant bellum principaliter, et quia in iure non discutitur natura fortitudinis explicite, expedit quod ipsius natura aliququaliter explicetur. Et quæro primo an fortitudo sit virtus moralis, et apparet quod non. Nam fortitudo est dispositio corporalis, ut l. i, C. De athleticis, lib. xi ; ff. De his qui not. infam., l. *athletæ* ; ff. Ad leg. Aquil., l. *qua actione*, § *si quis in colluctatione* ; De pugn. in duello, per totum ; C. De gladiatoribus, l. una ; De torneamentis, per totum. Ergo non est virtus moralis, cum dispositio corporalis differat ab habitu seu dispositione animæ, et ipsa sit inferior gradu, De pœn. et rem., cum *infirmitas* ; xii, q. i, *præcipimus* ; xxiv,

q. iii, *si habes* ; C. De sacrosanctis eccles., l. *sancimus*. Secundo sic. Omnis virtus moralis est coniectatrix in passionibus et operationibus, ut probat Philosophus, ii Ethicorum. Sed fortitudo est coniectatrix in medio, ut idem Philosophus, iii Ethicorum. Tertio sic. Quod non est una virtus, non est virtus, immo virtutes, quia pluralis locutio ad minus duorum numero est contenta, ff. De testi., l. *ubi numerus* ; causa iv, q. iii, *ubi numerus* ; et regula *pluralis*, De reg. iur., lib. vi. Et confirmatur per dictum Philosophum, primo Elenchorum, nam eadem est definitio præpositionis et unius præpositionis, sed fortitudo non est una virtus. Probatur hæc minor. Nam una virtus opponitur duobus vitiis extremis, ut xli di., *sæpe* ; De consuetudine, *ex parte*. Sed fortitudini opponuntur quatuor extrema, scilicet intimiditas et timiditas, timor et audacia, et defectus in audendo, qui est innominatus, ut probat textus iii Ethicorum. Oppositum probat Philosophus, iii Ethicorum. Pro solutione quæstionis est advertendum quod fortitudo sumitur æquivoce pro fortitudine, quæ idem est quod robur corporis, et fortitudine, quæ est virtus moralis. Prima est potentia qua quis potest movere, ut probat Philosophus, primo Rhetoricorum, et utraque requiritur in bello, et sic sumpta fuit generaliter, cum dixi quod fortitudo, seu vires et arma, fundant bellum, cum utraque requiratur. Sed de prima, quæ est robur corporis, non est dubium quod non est virtus moralis, per supra allegata, sed de secunda procedit quæstio, et illa est virtus secundum quam nos bene habemus circa timorem et audaciam in bellicis periculis. Et de ista prosequamur, quia prima est plana lippis et tonsoribus. Pro intellectu autem fortitudinis animæ, est attendendum quod in audendo et timendo contingit excedere et deficere, et utrobique male agere. Contingit et medie se habere, et sic virtuose. Differt tamen audacia a timore, nam audacia est passio appetitus irascibilis, secundum quem inclinamur ad aggrediendum terribilia. Timor inclinatur ad fugiendum, ut quilibet experitur in seipso, sed utrumque contingit bene agere et male, nam si quis videret x armatos et solus aggrediretur eos, male ageret, et si non fugeret male ageret, et sic male, circa aggressuram, et male, circa timorem. Sic etiam in timendo quis excedere potest, ut ecce si sunt centum homines in castro, et non videant nisi centum, si fugiant, male agunt. Sic etiam non aggrediendo, ut si viderint spoliari civitatem, si non aggrediantur, male agunt. Sic vides excessum in non timendo cum expedit, in timendo cum non expedit, in aggrediendo cum non expedit, et non aggrediendo cum expedit, et sic habes vitia extrema, audaciam et timorem, et utrobique gradum ut supra. Vltcrius est notandum quod ubicunque est reperire excessum extremorum vitiosum et vituperabilem, ibi est reperire medium bonum et laudabilem, quia si totum esset malum et vituperabilem, non posset dici quod defectus est vituperabilis, nam defectus diceretur defectus mali, et sic non foret malum. Expedit igitur quod in medio sit bonum cuius respectu unum dicatur malum excedendo, aliud deficiendo. Ex his inferuntur duæ conclusiones pro solutione quæstionis. Prima, quod fortitudo animæ est virtus moralis. Secunda, quod est una virtus. Probatur prima, nam omnis habitus electivus medii laudabilis est virtus moralis. Forti-



tudo est huiusmodi, ergo probatur maior per locum a definitione, quæ argumentatio est valida in iure, ff. De reg. iur., l. *omnis definitio*; ff. Depositi, l. i in prin., et l. *bona fides*, eod. titulo. Sic autem definit Philosophus virtutem moralem, ii Ethicorum. Probatur minor, nam fortitudo est habitus electivus medii circa timorem et audaciam, ut probat idem Philosophus, iv Ethicorum. Confirmatur. Illa est virtus moralis quæ generatur in nobis ex more, id est consuetudine, et hinc appellatur moralis. Fortitudo est huiusmodi, ergo probatur maior per locum a causa formali, quæ argumentatio est valida in iure, ff. Ad leg. Falc., l. *si is qui quadringenta*, § *quædam*; ff. Locati<sup>(\*)</sup>, l. *rei*, § *opere*; ff. De verborum sign., l. *ædificia*, § *perfecisse*, et l. *quæ forma*<sup>(\*)</sup>, eod. tit.; i, q. i, *detrahe*; De bapt., *debitum*. Probatur minor. Nam, in actu bellico propter pericula, appetitus sensitivus inclinat hominem ad fugam, ut dicit Philosophus, ubi in bellicis vindicat sibi locum ira, quæ est impetuosa et sic nos inclinat ad extrema vitiosa. Virtus autem, quæ est promptitudo appetitus rationalis, inclinat ad medium, et illa promptitudo generatur ex actibus iteratis, alias non delectabiliter operaremur, et sic non esset virtus, cum in virtuoso nulla debeat esse appetituum repugnantia, ut idem Philosophus, ii Ethicorum. Et sic patet prima conclusio, videlicet quod est virtus moralis. Secunda conclusio est quod est una virtus. Quidam hoc sic probant, timor et audacia sunt passionες contrariæ, fortitudo est virtus media, ergo est tantum una. Consequentia probatur. Nam unumquodque agens, intendens ad augmentum unius contrariorum, tendit ad remissionem alterius. Et sic virtus minuens timorem auget contrarium, et e contra. Confirmatur. Virtutes morales fortificantur a fine, sed unicus est finis, ergo unica est virtus. Primum patet per locum a causa finali, quod est validum argumentum in iure, l. *unius*, § *si servus*, ff. De quæstionibus, l. ult.; ff. De decur., l. *generaliter*; C. De episc. et cleric.; causa xvi, q. i; et cap. *cum cessante*, De appell.; et cap. *etsi Christus*, De iureiurando. Patet secundum. Nam finis fortitudinis in bellicis est bonum commune. Et si aliquis bellat propter lucrum, non est fortis, immo avarus. Alii dicunt aliter, videlicet quod timor et audacia non sunt passionες contrariæ. Hoc probant sic. Timor et audacia se compatiuntur in eodem respectu eiusdem, ergo non sunt contraria. Tenet consequentia, quia, posito uno contrariorum, removetur reliquum, ff. De instit., l. *sed si pupillus*, § *si institoria*; ff. De reg. iur., l. *ius nostrum*; l. *hæc verba*, De verb. sig.; in Authent., De mand. princ., coll. iii; xxxii di., *hospitiolum*, cum similibus. Primum patet. Nam quis propter bonum honestum vult bellare, sed timet propter Deum, etiam quis aggreditur, et sic audacia, et tamen timet ne lædatur, et sic timor. Ista opinio est contra textum Philosophi, ii Rhetoricorum, nec valet ipsorum ratio, nam delectatio et tristitia secundum omnes sunt contraria, et tamen idem delectari potest et tristari circa eundem actum. Tolle in adulterio delectatur quis propter sensualitatem, sed tristatur propter inhonestatem. Sic de proiciente merces in mari propter tempestatem, sic in proposito quis timet propter malum præsens, audet propter spem. Prima igitur opinio verior, unde Albertus tenet quod licet sint quatuor extrema, ut

supra, tamen non sunt nisi duplicis moris. Nam quicumque inclinatur ad bene audendum non timet, et quicumque non inclinatur ad bene timendum non audet, et sic infert unicam virtutem. Alii dicunt quod non sunt nisi duo extrema, nam si aliquis nihil timet, nimis audet, et sic timor et audacia sic faciunt unum extremum. Sufficiat ex prædictis concludere quod fortitudo, quæ est unum principale fundans bellum, ut sumitur pro corporis robore, non est virtus moralis, sed, ut sumitur pro virtute animæ, est virtus moralis, et una, et hæc est illa quæ bellum ad finem rectum perducit.

[Ca. xlii.]

*An fortitudo sit virtus cardinalis.*

Visum est de fortitudine quæ fundat bellum principaliter, quæ est virtus moralis et una. Sed quia hunc tractatum dirigo ad Cardinalem, quæro utrum hæc sit cardinalis. Apparet quod non, nam magnanimitas non est virtus cardinalis, ergo nec fortitudo. Tenet consequentia per locum a maiori, qui est validus in iure, ut l. i, C. De neg. gest.; ff. De senatoribus, l. *qui indignus*; C. De sacrosanctis eccles., Authent., *multo magis*; ff. Sol. matrim., l. *ex diverso*, § i; C. De epi. et cle., l. *si qua per calumniam*; xxxii, q. v, *si Paulus*; viii, q. i, *si ergo*; vi, q. i, *imitare*; xl di., *quælibet*; De elect., *cum in cunctis*. Sed magis videtur inesse quod magnanimitas sit virtus moralis quam fortitudo, quia nobilior et maior, ut dicit Philosophus in Ethicis, tractatu de magnanimitate. Patet primum, videlicet, quod magnanimitas non sit cardinalis, quia tunc cardinales forent plures quatuor. Solutio sic. Tota humana conversatio non versatur circa fortitudinem, ut cardinem, ergo non est cardinalis, quia inde cardinalis nuncupatur. Tenet consequentia per locum ab etymologia, qui est validus in iure, ff. De rebus creditis, l. ii, § *appellata*; in proœmio ff., § *discipuli*; C. De episc. et cler., l. *decernimus*; ff. De verb. sig., l. *tugurii*, l. *tugurium*<sup>(1)</sup>, eod. tit.; ff. De legatis iii, l. *librorum*, § *quod si papyrus*; xxi di., *cleros*; xvi, q. i, *si cupis*; et cap. *cum secundum*, De præbendis. Patet primum. Nam fortitudo versatur solum circa pericula bellica, sed pauci ducunt vitam suam cum bellicis periculis. Ergo. In contrarium apparet auctoritate communiter loquentium, qui istam ponunt in numero cardinalium, inter quos est Seneca, qui fecit tractatum specialem, et Tullius in Rhetoricis dividebat virtutem in has quatuor, ut cardinales. Et hæc argumentatio ab auctoritate est valida in iure, C. De sum. trinit. et fid. cathol., Epistola, *inter claras*; C. De bonis quæ liber., l. *cum multa*; ff. De rer. div., l. *in tantum*, § *cenotaphium*.

[Cap. xliii.]

*Vnde et qualiter quatuor principales virtutes dicantur cardinales?*

Pro evidentia et solutione quæstionis, primo est videndum unde et qualiter virtutes dicantur cardinales. Vbi sciendum quod, secundum Albertum, quod, sicut cardines cœli sunt poli antarcticus et arcticus, super quibus movetur



cœlum, et cardines ostiorum et portarum super quibus revolvuntur, sic, a simili, virtutes illæ dicuntur cardinales, super quibus versatur tota conversatio humana, et quas si quis habet, dicitur simpliciter bonus, et sine ipsis, non. Sic etiam domini Cardinales inde, iudicio meo, nomen sumpserunt, nam ipsi sunt mundi cardines, super quibus tota mundi gubernatio revolvitur et fingitur, et ad ipsos spectat sustentare totum pondus mobilis gubernationis, et motui ipsius fixum præstare fomentum. Duobus polis numero contenta est cœlestis natura, et sufficiunt, stabiles sunt, et immobiles firmant ordinem motus, non deviant a loco fixationis humani generis. Monastica gubernatio quatuor cardinibus fuit contenta, et sufficit. Si inde unde numerus, unde varietas, unde infirmitas, unde tanta a centro distantia, attenta causa, non est nomen arbitrii, tamen libertas causæ posset fingere modum. Sed quia de cardinalatu dixi in tractatu De Ecclesiastica Censura, nunc pertranseo, sed redeo ut discutiam principale propositum. Et quia iure, ut dixi, non bene ad plenum explicatur natura virtutum moralium cardinalium, aliquantulum et succincte, propter fortitudinem explicandam, de ea tractabo.

### *Quid sit virtus ?*

Sciendum est quod, ut dicit Philosophus, virtus est habitus electivus, et ut idem Philosophus asserit, ii Rhetoricæ, omne quod est cadit sub electione, sed eligibile est triplex.

### *De triplici specie boni, et qualiter virtutes cardinales a bono eliciuntur.*

[Cap. xxiv.]

Bonum utile, bonum delectabile, et bonum honestum, et ista bona sunt per electionem appetibilia et fugibilia, et omnes virtutes morales circa ista tria versantur. Explicemus unumquodque. Et primo bonum utile, circa quod versatur virtus altero de tribus modis, aut expendendo, aut accipiendo, aut conservando. Plures actus electivos non experitur homo in seipso, et ista deductio ab experientia est valida in iure, ut probatur in proœmio ff., circa princ. ; in Authent., De monachis, circa fin. col. i ; ff. De legat. iii, l. *si chorus*, § *his verbis* ; C. De vet. iure enucl., l. ii, § *quæ omnia* ; De elec., *quam sit*, Lib. VI. Si expendendo, hoc contingit dupliciter, aut enim expendit sua aut aliena. Si expendit sua, tunc circa ista expendendo versatur virtus liberalitatis et magnificentiae, et vitia opposita, scilicet, avaritia et prodigalitas, parvicia et vannasia. Si autem non sint sua, tunc potest distribuere illis quorum sunt, et tunc est iustitia, ut ff. De iust. et iur., l. *iustitia* ; et Instit., eod. tit., § *iustitia* ; xii, q. ii, *cum devotissimam* ; aut distribuit illis quorum non sunt, et tunc est iniustitia, ut iuribus statim allegatis, a contrario, quod est validum argumentum, ut l. i, § *huius rei*, ff. De offi. eius cui mand. est iurisdictio ; l. *si per procuratorem*, § *ignorantes*, ff. Mand. ; et cap. *cum apostolica*, De his quæ fi. a prælato ; et cap. *cum virum*, De conversione coniugatorum. In non reddendo

his quorum sunt, homo dicitur simpliciter malus, xiv, q. vi, *si res* ; De usuris, *cum tu* ; ff. De usurp., l. *sequitur*, § [*cum*] *quod autem*. Patet quod iustitia est cardinalis, quia non habendo ipsam circa distributionem eorum quæ sua non sunt, homo est simpliciter malus, sed liberalitas et magnificentia, quæ consistunt circa distributionem eorum quæ sua sunt, non sunt cardinales, quia quis male distribuendo sua, non est simpliciter malus, sed bene diceretur fatuus, et sic habes unam cardinalem, scilicet, iustitiam, circa expeditionem utilis boni. Si autem virtus moralis versetur circa bonum utile in accipiendo, hoc contingit dupliciter. Nam aut accipit quæ sua sunt, vel debita, aut aliena, et sibi non debita. Si sua, vel sibi debita, et a quibus non debet, peccat contra liberalitatem et magnificentiam, non tamen est simpliciter malus. Si autem accipiat aliena, talis est simpliciter malus. Hinc est quod contra talem sunt iuris remedia, ut interdicta, Vnde vi bon. rapt., ut ff. et C., per illos titulos Furti, et conditiones ex legibus et canonibus quæ in singulis casibus explicantur secundum varietatem actuum. Et sic per explicationem huius secundi actus, scilicet, acceptionis circa bonum utile, apparet quod iustitia obtinet cardinalatum, non autem liberalitas sive magnificentia, cum, per oppositum iustitiæ, dicatur simpliciter malus, non autem per oppositum liberalitatis vel magnificentiæ. Si autem versetur virtus moralis in retinendo bonum utile, hoc etiam contingit dupliciter, aut retinet et conservat sua, aut retinet aliena. Primo casu retinendo quæ sua sunt, et nulli dando, peccat contra liberalitatem et magnificentiam, nec talis est simpliciter malus, et si instes, si dives videat pauperem et indigentem et ad mortem, et nihil det, peccat mortaliter. Responderi potest quod tunc retinet non proprium sed commune, cum tempore talis necessitatis sit fienda communio, ut probat Clemens vi rationibus, xii, q. i, *dilectissimis*, et Augustinus, ut transumitur viii di., *quo iure*, et § i. Si autem quis retinet aliena, simpliciter est malus, et iniustus appellatur, si invito domino retineat, et remedia iuris sunt prodita, de quibus supra. Circa igitur bonum utile, elicitur unam solam virtutem cardinalem, tam in distribuendo, quam accipiendo, quam conservando, quia per ipsius oppositum homo est simpliciter malus. Cardinalis est iustitia, non cardinales sunt liberalitas et magnificentia, et hoc clarum.

Dicebam secundo quod erat secundum bonum delectabile, circa quod versatur virtus moralis, et circa hoc versatur dupliciter, aut largiendo aut accipiendo. Si largiendo, sic sunt virtutes quæ sunt in ludis, ut cum aliquis largitur aliis, habet delectationem. Et huiusmodi sunt amicitia, affabilitas, et eutrapelia. Istæ autem virtutes non sunt cardinales, quia non sunt de necessitate humanæ naturæ, quia multi sunt magni et virtuosus qui in talibus nesciunt se bene habere. Si autem suscipiendo, et hoc dupliciter, aut enim versatur principaliter circa delectabile, tunc dicitur simpliciter malus, et appellatur intemperantia, et dico se male habere excedendo, nam insensibilis, qui non delectatur, non est simpliciter malus, sed excedens, et sic habes temperantiam quæ obtinet cardinalatum, quia per eius oppositum quis est simpliciter malus, et est de necessitate humanæ conservationis. Si autem versetur simpliciter circa tristabile, et hoc dupliciter, nam est quoddam tristabile quod aptum est



movere ad iram, et tunc versatur mansuetudo, hæc non est cardinalis, quia non est necessarium quod quis irascatur, sed per actum remittitur quominus transeat ad actum secundum exteriorem iniustitiæ. Si autem transiret ad actum exteriorem, tunc diceretur iniustitia. Si autem est tristabile, quod aptum est movere ad timorem, tunc est fortitudo. Nam, sicut ille est simpliciter malus qui non vult sustinere terribile propter bonum virtutis, et sic fortitudo est virtus cardinalis, et hoc de bono delectabili.

Dicebam ulterius quod erat tertium bonum, scilicet, honestum, et tale est triplex. Quoddam pertinet ad virtutem cognoscitivam, et hæ sunt virtutes intellectuales, et hæc sunt scientia, sapientia, intellectus, ars, et prudentia. Quoddam pertinet ad virtutem interpretativam, ut veracitas et falsitas. Quoddam pertinet ad artem appetitivam.

Capiamus secundum membrum, scilicet pertinens ad virtutem interpretativam, et dico quod ista veracitas spectans ad virtutem interpretativam non est virtus cardinalis, quia non reddit hominem simpliciter bonum, nec eius vitium simpliciter malum. Vitium enim magis oppositum est iactantia. Sed iactator est triplex, est enim iactator simplex, et iste est gratia delectationis, alter gratia honoris, alter gratia lucri. Sola prima iactantia opponitur directe veracitati, aliæ autem ingrediuntur aliam speciem vitii. Nam primus solum peccat quia est mendax, sed mendacium est duplex, nam est mendacium quod est simplex falsa significatio vocis, et de illo dixi quod directe opponitur veracitati. Aliud est falsa significatio vocis, cum intentione fallendi, et illud facit simpliciter hominem malum, et incidit in speciem iniustitiæ. Et has et alias species mendaciorum prosequitur Augustinus in libro De Mendacio. Transumptive habetur xxii, q. ii, cap. *primum capitale*. Aliud est, ut dixi, bonum honestum pertinens ad virtutem appetitivam. Et hoc dupliciter. Aut essentialiter, et talia sunt virtutes morales de quibus supra tactum est. Aut significative, et talia sunt laus, bona terrena, et circa istud bonum honestum est magnanimitas et philominia<sup>(?)</sup>, et tales non sunt virtutes cardinales. Nam etiam multi sunt virtuosus qui non appetunt honores quibus sunt digni. Si autem loquamur de bono honesto quod spectat ad virtutem cognoscitivam, tunc sunt virtutes intellectuales, ut scientia, intellectus, ars, prudentia. Primæ tres non sunt cardinales, quia non sunt de necessitate vitæ humanæ, sed prudentia est de necessitate boni. Immo impossibile est aliquem esse virtuosum sine prudentia. Nam prudentia regulat ceteras virtutes.

Ex his infertur qualiter fortitudo, propter quam fit sermo, est virtus cardinalis. Et apparet qualiter sunt quatuor, elicite ex triplici bono appetibili et fugibili, et triplici virtute animæ meæ, scilicet, iustitia, temperantia, fortitudo, et prudentia, quæ, nedum cardinalis, immo inter ceteras obtinet papatum et principatum.

Fuit aliquis discursio, sed sim supportatus, quia non reputavi propter iuristas, nec aliter, explicare naturam fortitudinis, de qua est principalis sermo.

[Cap. xxv.]

*Quomodo et qualiter quis possit dici fortis in bello.*

Consequenter quæritur an aliquis possit dici fortis, etiam si non fuerit exercitatus circa pericula mortis in bello. Apparet quod sic, nam fortitudo est necessaria bonitati humanæ, cum sit cardinalis, ut supra proxima quæstione, quæ bonitas humana haberi potest sine exercitio bellico. Ergo consequentia probatur per locum a coniunctis, ut ff. De neg. gest., l. *atqui natura*; iv di., *denique*; vi di., *nunc de superfluitate*. Primum patet per notata supra proxima quæstione. Item Tullius dicit quod fortitudo est considerata periculorum susceptio et laborum perpessio. Hoc autem potest esse sine bellico actu, ergo probatur consequentia per locum a consequenti destructo, quod est validum argumentum in iure, ff. De rebus creditis, l. ii, § ii; C. De furt., l. *apud antiquos*, ver. *quam*; ff. De in integr. restit., [nemo] *non videtur*. Oppositum dicit Philosophus, iv Ethicorum. Et propterea hoc continetur in sacramento militis, cum attingitur, scilicet, non evitare mortem, ut l. pæn., ff. Ex quibus causis maior.; et l. i, C. De his qui non imple. stip., lib. [xi] x. Pro solutione quæstionis est attendendum quod fortitudo sumitur generaliter pro omni firmitate animi, et hæc est generalis ad omnes virtutes, nam animi inconstantia vituperatur et a iure reprobat, xxxii, q. v, *horrendus*; De iureiurando, *quemadmodum*; ff. De adulteriis, l. *si uxor*; ff. De decur., l. p.; ff. De neg. gest., l. pæn.; regula *quod semel*, et regula *mutare*, De reg. iur., Lib. VI. Et hoc modo non foret dubium quin talis possit fortis esse sine periculo bellico. Sumitur etiam stricte prout virtus specialis, quæ est inclinans ad aggrediendum et expectandum pericula, pro fugiendo malo culpæ. Vnde triplex est malum, noxium quod opponitur utili, triste quod opponitur delectabili, culpa quod opponitur honesto. Bonum autem animæ quod est honestum est præferendum bono utili et delectabili, sicut anima rationalis præferenda est corpori, xii, q. i, *præcipimus*; xxiv, q. iii, *si habes*; C. De sacrosanctis ecclesiis, l. *sancimus*; De pœnit. et rem., *cum infirmitas*. Ex hoc infertur quod tres sunt virtutes morales necessariæ ad hoc, ut quis dicatur bonus et virtuosus. Vna quæ præfigat animum ad præferendum bonum honestum utili, et hæc est iustitia, Instit. eodem, § *iustitia*; xii, q. ii, *cum devotissimam*. Alia firmans animum ad præferendum bonum honestum delectabili, et hæc est temperantia, ut vi di., *sed pensandum*, pal.; et De constit., *nam concupiscentiam*. Alia firmans animum ad sustinendum passiones magis quam incurrendum malum culpæ, et hæc est fortitudo, ut C. De athlet., l. una, lib. x; C. De his qui non implet. stip., l. i, eodem libro; vii, q. i, § *hinc etiam*. Et hæc est fortitudo de qua est sermo. Et merito hæc dicuntur cardinales, quia sunt de necessitate bonitatis humanæ, et quælibet istarum custodit seipsam et quamlibet aliarum. Tolle exemplum. Mulier temptata de adulterio per promissiones se defendit per temperantiam, ff. De rit. nup., l. *palam* ii. Si temptetur per terrorem, ista est fortitudo, xxxii, q. v, [Lucretiam] *proposito*, § *Lucretiam*, et [cap.] § [fieri] *non potest fieri* et [cap.] § *finge, de pudicitia*; xxxiv, q. i, *non satis*. Si autem temptetur per munera, ab ista se defendit per iustitiam, xii, q. ii, *cum devotissimam*. Potest etiam exemplari de fortitudine, nam si propter timorem se de-



fendit, dubitat<sup>3</sup> ab ista se defendit per fortitudinem, ut in cap. [*Lucretiam*] *proposito*, et [cap.] § *finge, de pudicitia*, xxxii, q. v. Si temptatur propter delectabilia, tunc defendit temperantia, xxxii, q. v, *non potest*, et cap. *nec solo*, et cap. *qui viderit*, et cap. *non mæchaberis*. Si propter munera, tunc defendit iustitia, quia iniustum est vendere bonum honestum tanquam spirituale i, q. [i] ii, *quam pio*; De simonia, per totum. Si falsis rationibus, tunc defendit prudentia, et sic una cardinalium firmat animum, ut præferatur bonum honestum utili, ut iustitia, alia ut præferatur delectabili, ut temperantia, alia ad sustinendum tristia propter bonum tuendum et malum culpæ excludendum, ut fortitudo. Prudentia autem ceteras regulat, sic debet esse in cardinalibus.

*Uterius est sciendum quod Bellum sumitur dupliciter.*

[Cap. xxvi.]

Vno modo pro actu bellandi hinc inde, ut sumitur ff. De capt. et postlim. revers., l. *in bello*, et l. *postliminium*; C. De gladi., l. unica, lib. xi. Alio modo sumitur pro qualibet expectatione corporalis periculi, etiam si non sit actualis invasio, et hoc si periculum esset cui posset verisimiliter resisti, alias non esset bellum, ut in latrone suspendendo et alio iustitiando.

Si bellum capiatur pro actuali invasione hinc inde facta, fortitudo non est solum circa illa pericula, quia tunc non esset cardinalis, cum multi sint virtuosus qui non sunt in talibus exercitati. Si autem sumatur secundo modo, tunc fortitudo versatur circa illa pericula generaliter, sicut dicimus in muliere quæ sustinet pericula propter tuitionem castitatis. Ibi non est bellum primo modo sumptum, sed secundo sic, et tamen est fortitudo. Notandum tamen quod fortitudo non est circa quælibet pericula bellica. Nam, si aliquis invadat alium et defendat se, non est fortis, quia tunc canis esset fortis fortitudine. Sed quando sustinet pericula bellica propter evitare malum culpæ, tunc est fortis. Vnde dicit Philosophus quod non est fortis propter necessitatem, hinc etiam causa xxiii, q. iv, *Nabuchodonosor*, et cap. *de Tyriis*; De Pœnit., dist. ii, *sic enim*. Tunc concluditur solutio quæstionis propositæ cum quæritur an fortitudo sit circa pericula mortis et bellica, et dicendum quod non, ut exemplatum est in muliere. Secundo modo, quod extremus actus fortitudinis sit circa mortis pericula, dicendum quod sic, quia virtus est circa difficile. Tertio modo, quod inclinet ad sustinendum mortis periculum, si casus occurrat, et dicendum quod sic, quia virtus extenditur circa ultimum potentiæ, primo Coeli et Mundi.

*Quis sit principalior actus fortitudinis in bello?*

[Cap. xxvii.]

Sed quæritur quid sit principalius fortitudinis bellantium, an expectatio hostium, an aggressus eorum? Et videtur quod aggressus sit principalior actus fortitudinis. Primo, quia, ut inquit Philosophus, ii Ethicorum, tractatu de liberalitate, virtuosius est dare quam recipere. Scribitur etiam Ecclesiastici iv cap., "Non sit manus tua porrecta ad accipiendum, et ad dandum

collecta." Hinc est quod scribitur, " Beatius est dare quam accipere," xvi, q. i, *prædicator*; et De celebr. missar., *cum Marthæ*; De donat., cap. i. Ergo, a simili, virtuosius est aggredi quam exspectare, quia aggrediens dat, exspectans recipit. Præterea virtuosius est bene facere quam bene recipere, ut idem Philosophus. Probatur. Nam si melius est facere quam pati in genere virtutum, ergo bene facere melius quam bene pati. Consequentia tenet per locum a connexis, quod est validum argumentum in iure, ff. De neg. gest., l. *atqui natura*; iv dist., *denique*; vi dist., *quia de superfluitate*. Sed aggrediens bene dat, exspectans bene recipit, ergo virtuosius aggredi. Præterea melius est bene operari quam non operari turpe, iuxta illud non sufficit abstinere a malo, nisi et bonum faciamus, nam et illud, scilicet, bene operari bonum, meliorem ducit finem cum in actibus is finis ponderetur, et ab illo fiat denominatio. Consequentia tenet per locum a fine, qui est validus in iure, ut ff. De ritu nupt., l. *si quis*; ff. De iur. fisci, l. *non intelligitur*, § *si quis palam*; ff. Communia præd., l. *receptum*; ff. De auro et arg. legat., l. *et si non sint*, § *perveniamus*. Sed aggredi est bene operari, exspectare est non operari turpe, id est non fugere, ergo virtuosius aggredi quam exspectare. Præterea id virtuosius est quod est difficilius. Nam et legis responsum aliter non emanat nisi super difficili et dubitabili, ut l. *quod Labeo*, ff. De Carbon. edicto; et l. i in fin., ff. Ad municipalem. Sed aggredi est difficilius quam exspectare, nam homo fessus exspectare potest, non autem aggredi. Probatur maior per eundem Philosophum, tractatu de fortitudine, nam actus fortitudinis specialiter est circa difficilia et terribilia. Præterea, illud virtuosius quod amabilius, nam actus virtutum de sui natura sunt amabiles, ut idem Philosophus, et probatur hoc De pœnit., dist. ii, *ergo*, et cap. *corpus*, et cap. *proximos*. Sed aggredi est amabilius. Quam plures utilitates affert reipublicæ, et plura in eodem genere prævalent paucioribus, in Authent., De consan. et uter. frat., in princ.; De sent. excom., *cum pro causa*; iii, q. iv, *Engeltrudam*; De offi. delegat., *prudentiam*, in princ.; quia inimicos expellere est utilius quam ipsos exspectare. Præterea illud virtuosius quod est laudabilius, quia virtus moralis est bonum laudabile, sed aggredi est laudabilius quam exspectare. Nam regulariter plus laudantur aggredientes quam fugientes. In contrarium est textus Philosophi, iii Ethicorum, tractatu de fortitudine, ubi dicit quod principalior actus fortitudinis est sustinere. Idem tenet ibi Albertus et Custratius.

Pro evidentia huius quæstionis est advertendum quod secundum dictamen rectæ rationis non est semper aggrediendum, nec semper fugiendum, nec semper exspectandum, nam quandoque expedit aggredi, quandoque fugere, quandoque exspectare. Ex quo apparet quod fortitudinis triplex est actus, scilicet, aggressura, fuga, et exspectatio. Et quod aliquando fugiendum sit forti, patet ratione, nam pericula supra hominem sunt fugienda. Si enim unus solus vellet aggredi mille, vel ipsos aggredientes exspectare, non esset fortis, sed audax et temerarius, ut idem Philosophus ibidem. Triplex est ergo actus fortitudinis, scilicet, aggressus, fuga, et exspectatio. Et inter istos minimus est fuga. Hoc probatur. Nam ille actus est inter ceteros minimus qui inter



ceteros est minus difficilis, cum ars et disciplina sint circa difficilia. At fugere est facilius quam aggredi vel exspectare. Ergo. Præterea ille actus est minimus. Assimilatur vitio peiori. Probatur per locum ab extremis, qui est validus in iure, ff. Communi divid., l. *arbor*; et l. *una*, ff. Si quis ius dic. non obtemp.; et l. *quæritur*, ff. De stat. hominum. Sic est in proposito. Nam per fugam assimilatur timori, quod est peius vitium quam sit audacia, ut idem Philosophus, ibidem.

Secundo dico quod exspectatio est actus principalior. Hoc probatur, nam virtuosius est bene facere bonum quam bene recipere bonum. Ergo virtuosius est bene pati malum quam bene facere malum. Tenet consequentia per locum a contrariis, qui est validus in iure, ff. De act. emp., l. *Iulianus*, § *procurator*; ff. De instit., l. *sed si pupillus*, § *si institoria*; ff. De verb. sig., l. *hæc verba*. Sed aggrediens bene facit malum aggresso, exspectans autem bene recipit malum ab aggrediente. Præterea ille actus est principalior qui est difficilior. Hoc pluries supra probatum est. Sed exspectatio est difficilior quam aggressus. Probatur hoc. Nam si fiat aggressus, fit in modum fortioris, et cum spe de evadendo, alias recta ratio non dictaret aggressum, si non esset spes evasionis. Sed exspectatio fit in modum minus fortis erga fortiorum. Sed difficilior est bene se habere cum fortiori quam cum minus forti, ut claret. Confirmatur. Nam in exspectando oportet moderari timorem magnum cum tristitiis corporalibus. At aggrediendo non expedit tantum moderari timorem. Ergo.

Præterea exspectatio et sustinere denotant diuturnitatem et perseverantiam, et in genere boni quod diuturnius melius, De Pœnit., dist. iii, *irrisor*; De Pœnit., dist. ii, *pennata*, et cap. *non revertebantur*; ff. De in rem vers., l. *si pro patre*, § *et versum*. Sed aggressus denotat quendam impetum parum durabilem proveniente ab iracundia, ut l. *si adulterium*, § *imperator*, ff. De adulter.; et C. eod. tit., l. *Gracchus*; et regula *quod calore*, ff. De reg. iuris.

Præterea exspectatio facit pericula mortis esse præsentia, et illa tunc difficilia et timibilia, ut Philosophus, ii Rhetoricæ. Ergo.

Infertur igitur expectationem actum principaliorem fortitudinis, licet vulgares non recte iudicantes, contrarium sapiant. Si autem, quod prædixi, fugam actum<sup>(7)</sup> fortitudinis [videtur] obstare, quod in hoc tractatu scripsi supra in articulo de pertinentibus ad ducem et milites, ubi dixi quod milites servare debent iuramentum quod iurarunt, non fugere, etc.

Solutio patet ex iam dictis, nam ubi sunt pericula supra hominem, fugiendum est, xxiii, q. iv, *displicet*, Iohannis viii, Matthæi x, transumptum, vii, q. i, § *hoc observandum*. Vbi autem sunt pericula non supra hominem, sed est aliqualis spes, tunc procedunt statim dicta. Ad allegata in contrarium patet responsum, discurrendo per singula, uno tamen addito, videlicet, quod vulgares plus laudant et amant aggredientes quam exspectantes. Hinc est quod dicit Philosophus ibidem, nihil prohibet milites stipendiarios in civitatibus utiliores esse quam viros fortes, nam illi ad modicum lucri vitam mutant, et

fugiunt et aggrediuntur sine dictamine rationis, viri autem fortes nec fugiunt nec aggrediuntur sine dictamine rationis.

*Quot generibus fortitudinis quis utatur in bello?*

Sed quæro, quot generibus fortitudinis utatur quis in bello? Solutio. Sex sunt similitudines veræ fortitudinis, quæ est virtus moralis sita inter audaciam et timorem, et istis sex utuntur milites in bellis.

Prima qua aliqui viriliter in bello aggrediuntur propter gloriam et honorem, videntes quod tales solent laudari, et timidi vituperari, et de hac C. De re milit., libro xii; ff. Ad leg. Aquil., l. *qua actione*, § *in colluctatione*; De pub. iudic., per totum.

Secunda quæ appellatur politica, qua aliqui sunt fortes propter timorem pœnæ corporalis vel pecuniariæ, quæ imponi consuevit timidis et fugientibus in bello, et ista vocatur politica, quia inter cives, et talis servilis est, De Pœnit., distinct. ii, § *sicut secta*.

Tertia est quæ vocatur militaris, qua homines sunt fortes, quia sciunt artes bellandi, sicut Teutonici et alii experti stipendiarii. Hanc inducit experientia, rerum magistra, ff. De leg. iii, l. *servis*, § *ornatricibus*; et cap. *quam sit*, De elect., Lib. VI; et, ut dicit Philosophus in tractatu De Fortitudine, stipendiarii pugnant cum aliis, sic armati cum inermibus. Et isti faciles sunt ad aggrediendum, et faciles ad fugiendum. Hodie tamen facilius se expediunt, quia levant digitum et trahunt barbutas<sup>(\*)</sup>, et se reddunt, et statim dimittuntur, ut est mos eorum inter se.

Quarta est qua utuntur aliqui propter furorem, nam furor est res impetuosa ad pericula, et iste aliquando iuvat in bellis, quia homines sunt audaciores, et hanc inducit impetus iracundiæ, ut l. *si adulterium*, § *imperatores*, ff. De adulter.; et l. *Gracchus*, C. eodem titulo, et l. *quod calore*, ff. De reg. iuris.

Quinta, qua aliqui utuntur propter spem. Nam aliqui propter spem victoriæ viriliter aggrediuntur. Ibi enim præponderat spes potentiæ sensitivæ rationi, De constit., *nam concupiscentiam*; vi dist., *sed pensandum*.

Sexta est propter ignorantiam, nam aliqui aggrediuntur vel exspectant, ignorantes pericula quæ imminet, qui tamen fugerent hoc scito. Ibi non videt quid agat, ad instar infantis, C. De fals. mone., l. i; ff. Ad leg. Corn. de sica., l. *si infans*.

Istis fortitudinibus milites regulariter utuntur in bellis. Inter istas autem fortitudines, si vis videre quæ magis attingit virtuti, debes attendere quod omnes istæ sunt similitudinariæ fortitudinis veræ. Nam in vera fortitudine, sicut in qualibet virtute, oportet quod opus fiat scienter. Nam ignoranter operantium nulla est virtus, quia prudentia, quæ est habitus intellectus, regulare debet omne opus virtutis. Secundo, debet eligi. Tertio, quod eligatur propter bonum intrinsecum virtutis, non autem propter bonum extrinsecum.



Quarto, quod operetur firme et durabiliter. Quinto, quod delectabiliter. Sexto, quod opus debet esse difficile, nam ars sit circa difficilia. Hæc omnia requiruntur in vera fortitudine, circa aggressum, vel exspectationem alicuius terribilis et difficilis. Per hoc patet quæ supra dictarum magis assimilatur veræ fortitudini, et quæ non. Nam omnes præter ultimam assimilantur in eo quod scienter, et sic ultima est minime similis in hoc, quod eligens. Aliæ conveniunt cum vera, præter illam quæ fit ex furore. In eo autem quod propter bonum intrinsecum, omnes deficiunt a vera, nam prima est propter bonum extrinsecum, utpote gloriam, alia propter fugam pœnæ, alia propter lucra et stipendia, alia propter spem vincendi. Prima autem politica, quæ est propter honores et gloriam, magis assimilatur veræ propter finem honorabiliorem. Nam honores sunt significativi virtutum, et isti plus operantur, tendendo ad bonum publicum, nam viriliter bellis insistent, ut exemplat Philosophus de Hectore in bellicis sic se habente.

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*An fortis in bello potius debeat mortem exspectare quam fugere ?*

[Cap. xxviii.]

Tertio quæro, an fortis in bello aliquo casu magis debeat mortem exspectare quam fugere de bello, ubi per fugam evadere posset. Et videtur quod non sit mors exspectanda, nam illud magis eligendum quod est delectabilius, et illud minus quod minus, primo Rhetoricæ dictum est Philosophiæ. Sed est delectabilior vita quam mors, ergo eligibilius fugere et vivere quam exspectare et mori. Oppositum videtur dicere Philosophus, iv Ethicorum, tractatu de fortitudine, et iii, tractatu de voluntario et violento, et etiam tractatu de magnanimitate, ubi dicit quod prius est moriendum quam aliquid turpe committendum.

Solutio. Pro evidentia quæstionis est advertendum quod quæstio potest habere duplex fundamentum ; unum veritatis et fidei, ut supponamus aliam vitam et beatitudinem. Et secundum hoc fundamentum quæstio non haberet grande dubium, nam si aliquis pugnaret contra infideles, et propter fugam suam multi perirent fideles, et solus salvaretur, tunc præeligenda esset exspectatio et mors. Et est ratio, nam fugiendo consequitur vitam corporalem, exspectando, moriendo corporaliter, consequitur vitam animæ, quæ est sine comparatione nobilior, ergo præeligenda.

Secundum fundamentum potest esse naturalium et viventium secundum legem naturæ, ut non supponatur ulterior vita, et tunc quæstio habet dubium et opiniones varias. Aliqui dicunt quod mors exspectanda contingere potest multipliciter. Vno modo, quod evidenter certum sit mortem evenire debere cum exspectatione, nec spes sit de salute nisi cum fuga. Alio modo, quod licet sit aliqua evidentia mortis, tamen spes aliqua haberi potest de vita sine fuga. Isto secundo casu, dicunt intelligendas auctoritates Aristotelis et aliorum philosophorum, qui dicunt quod magis moriendum, id est, viriliter pugnandum. Primo autem casu dicunt nullo modo mortem exspectandam. Probant

hoc sic, nam de duobus malis minus malum est eligendum, xiii dist., *nervi*; et est principium in moralibus. Sed minus malum est fugere quam exspectare et mori. Quod sit minus malum probatur, nam illud est minus malum per quod pauciora bona perduntur quam illud per quod plura, sed in morte omnia tolluntur, in Authent., De nupt., § *deinceps*; et secundo Physicorum. In fuga perditur solum bonum fortitudinis moralis. Ergo. Præterea, si melius esset mori, hoc esset quia mori esset actus virtutis, sed hoc est falsum, nam actus virtutis vel est felicitas, vel ad actum felicitatis tendens. Sed mors est felicitatem destruens. Ergo. Præterea si hoc casu eligenda esset mors, hoc esset quia fortitudo, quæ est virtus moralis, ad hoc inclinaret. Sed hoc est falsum, nam virtus moralis non tendit ad corruptionem naturæ, immo ad conservationem ipsius. Nam ad hoc factæ sunt leges, iv dist., *factæ sunt*; sed mors tendit ad destructionem, in Authent., De nupt., § *deinceps*. Præterea, si hoc quis deberet magis eligere, aut foret propter bonum proprium aut alienum. Non propter proprium, quia in morte omne bonum exstinguitur, ut supra tactum est. Non alienum, quia non tantum bonum alteri potest quærere quantum sibi perdit, cum se plus aliis debeat diligere, ut l. *præses*, C. De servit. et aqua. Confirmatur. Nam secundum veritatem et fidem apparet quod virtuosissimi milites fugiebant in bello, ut tempore Caroli Magni.

Alii dicunt totum econtra, scilicet, quod potius exspectandum et moriendum quam fugiendum. Et hoc probant. Nam quilibet scit de necessitate se moriturum esse, si ergo moriatur fortis, non perdit nisi id in quo credit mortem præsentem differre a futura. Sed istæ non differunt in hoc quod est amittere bona virtutis et conservare, sed differunt in hoc quod est diutius retinere et minus diu. Tunc arguunt sic, illud eligibilius est in quo plura bona adquiruntur, et pauciora perduntur, sic est in proposito. Ergo. Probatur hæc minor. Nam si moriatur, quærit actum fortitudinis, qui est nobilissimus. Si fugit, nihil quærit, nisi continuationem prius habitorem donec duret vita, et sic quærit tempus. Confirmatur. Nam certum est quod consistentes circa delectationes corporales magis eligerent modico tempore vivere delectabiliter quam longo pœnaliter, ergo sic in delectationibus animæ hoc potius est eligendum.

Opinionem primam credo veram, nam, ut dixi in alio articulo, actus fortitudinis sunt aggressus, fuga, et exspectatio. Nam non semper insequendum, nec semper fugiendum, nec semper exspectandum, immo cum dictamine rationis.

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[Cap. xxix.] *An miles una cum comitiva sua viriliter in hostes prorumpens, et ipsos totaliter confringens, contra mandatum ducis, sit capite puniendus?*

Quarto quæritur, pone dux exercitus mandavit ne quis prorumperet in hostes sub pœna capitis. Quidam strenuissimus miles, cum magna comitiva militum quibus præerat, contra mandatum ducis, prorupit in hostes, et ipsius strenuitate totaliter hostibus conflictum dedit. Quæritur an capite puniendus sit. Et videtur quod sic, nam dicit textus, in bello, qui rem prohibitam a duce



fecit, aut mandata non servat, capite punitur, etiam si rem bene gesserit, ff. De re militar., l. *desertorem*, § *in bello*. Probatur per iura quæ volunt astrictos obedientia ad ipsam teneri, ff. Mandati, l. *si remunerandi*, § *si [pignus] passus*<sup>(1)</sup>, et l. *sed Proculus*; ff. Ad Macedon., l. *sed etsi*, § *ii*<sup>(2)</sup>; ff. Ad leg. Aquil., l. *si servus servum*, § *et si puerum*; C. De neg. gest., l. ult.; cum similibus. Confirmatur. Nam malum non excusatur propter bonum quod sequitur, lvi dist., can. *undecunque*; De Pœnit., dist. i, *non sufficit*. Confirmatur. Nam facta non sunt ab eventu notanda, xv, q. i, *illa*, et cap. *non est*; xxiii, q. v, *de occidendis*; ff. De neg. gest., l. *sed an ultro*, § *i*; ff. Mand., l. *qui mutuam*, § *sumptus*; ff. De contraria tut., l. iii. Ergo ab hoc eventu insigni non fiet notatio, immo ab obedientia prævenienti.

In contrarium videtur. Nam propter peritiam et factum insigne effectualiter perpetratum remittitur pœna, quæ alias imponi deberet, aliquid attemptanti contra legem vel mandatum principis. Probat textus ff. De pœnis, l. *ad bestias*; xxii, q. ii, cap. *quæritur cur Patriarcha*.

Solutio. Audio quod dominus Ricardus Malumbra terminavit quod delinquens propter peritiam magnam pœnam evadit per dictam l. *ad bestias*; et induci poterat dictum cap. *quæritur cur Patriarcha*. Tamen illam opinionem non credo veram, immo aperte est contra textum l. *desertorem*, § *in bello*, ff. De re militari. Nec obstant iura in contra allegata, nam aliud est quem non incidere pœnam legis vel hominis, aliud est post pœnæ commissionem ipsam a principe remitti posse. Illa iura non probant quominus pœna committatur, sed bene probant ipsam a principe posse remitti, et sic supponunt illam commissam, ut probat uterque textus, si bene inspiciatur.

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*An duci belli capto sit venia concedenda?*

[Cap. xxx.]

Quinto quæritur, pone dux belli capitur ab hostibus, numquid ei est venia concedenda an veniat puniendus? Et videtur quod venia sit concedenda per cap. *noli* in fin., xxiii, q. i. Ecce textus, "Sicut debellanti et resistenti violentia debetur, sic victo vel capto venia conceditur." Hoc probatur, nam dicit textus quod tenetur quis parcere hosti suo, ii, q. [vi] v, *quanto*, in fine. Ecce textus, "quia sicut in contumacia persistentibus severos nos esse convenit, sic humiliatis et pœnitentibus locum veniæ negare non debemus."

In contrarium videtur, nam captus efficitur servus hostium, ut l. *hostes*, et l. *hostes*, ff. De captivis et ff. De verb. significatione.

Solutio. Credo primam partem veram, videlicet, quod venia sit concedenda humiliato et resistere nolenti, nisi per veniæ concessionem pacis perturbatio timeatur, tunc enim venia plectendus est. Hoc probat textus in cap. *noli*, in fin., ibi dum dicit, "maxime in quo perturbatio non timetur," et exponit Hugo, et Archidiaconus, "maxime," pro "tantum," ut sit sensus literæ, quod solum sit concedenda venia ubi non timetur pacis perturbatio, alias non. Et fertur quod per illam expositionem Carolus fecit amputari caput Conradino.

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[Cap. xxxi.] *De his qui tenentur ad bellum accedere, et de accedentibus non astrictis.*

Quarto videndum restat de his qui tenentur ad bellum accedere, et quid de accedentibus non astrictis ?

*An, a domino moto iusto bello, teneantur vassalli accedere propriis sumptibus ?*

Et quæritur primo, an, si dominus moveat iustum bellum, teneantur vassalli accedere cum armis et equis et in expensis propriis. Et videtur quod sic, quia vigore iuramenti tenentur iuvare dominum, ut xxii, q. v, *de forma* ; Innocentius, in cap. *sicut*, De iureiur., tenet quod non tenetur, nisi ex pacto speciali ad hoc sint obligati, cum ipsi non teneantur ad munera personalia. Conclude in hoc quod vassalli de iure non tenentur, nisi ad ea quæ continentur in cap. *de forma*, xxii, q. v ; nisi ex speciali conventionione ad illud obligentur ut.

[Cap. xxxii.] *An subditi uni baroni, moventi guerram contra regem suum, teneantur ipsum baronem iuvare contra regem.*

Secundo quæro, pone quod Baro Regis Hispaniæ moveat guerram ipsi regi, et mandet omnibus hominibus suis ut iuvent ipsum in bello contra Regem, numquid tenentur, cum iuraverint ipsum iuvare contra omnem hominem. Et videtur quod sic, nam grave est fidem fallere, Qui cleri. vel voventes, *veniens*, et cap. sequenti ; l. i, ff. De consti. pecunia. Etiam verba generaliter probata generaliter sunt intelligenda, ff. De legat. præstan., l. i, § *generaliter*. Etiam quia iuramentum astringit, nisi a iuramento absolvantur, xv, q. vi, cap. ii et iii. Contrarium est verum, nam Baro movens guerram Regi incidit in legem Iul. maiestatis, l. i et l. ii, ff. Ad leg. Iul. maiest. ; vi, q. i, § *verum*, versus *quisquis cum militibus* ; lxxix dist., cap. ii. Nam Rex Hispaniæ est princeps in regno suo. Etiam opem non fert qui ad peccandum iuvat, xiv, q. vi, *si res* ; nec præceptum illius ipsos excusaret, ff. De oblig. et act., l. *servus* ; xi, q. iii, *non semper*, et cap. *qui resistit*, et cap. *si dominus*. Nec sacramentum ad hoc ligat, quia non est inventum ut sit iniquitatis vinculum, xxii, q. iv, *inter cetera* ; De iureiur., cap. i, Lib. VI ; faciant quæ notantur in cap. *petitio*, De iureiurando.

[Cap. xxxiii.] *An subditi uni baroni, moventi guerram alteri baroni, teneantur ipsum primo, an regem moventem guerram alteri regi, iuvare, utriusque mandato uno concursu recepto ?*

Tertio quæritur, Baro Regis Hispaniæ movet guerram alteri Baroni, Rex Hispaniæ movet guerram regi Granatæ. Baro mandat hominibus quatenus iuvent ipsum ; Rex autem mandat eisdem ut iuvent eum ; et concurrunt mandata. Quem primo iuvare tenentur ?

Videtur quod primo Baronem, nam Baroni sunt subiecti ratione fidelitatis et ratione iurisdictionis, in Authent., De quæstore, § *si vero*, Coll. vi. Regi



autem sunt subiecti ratione iurisdictionis generalis tantum, et sic duæ rationes vincunt unam, in Authent., De consang. et uter. frat., § i; De re iudic., *cum æterni*, Lib. VI; xiii dist., can. i.

In contrarium videtur. Nam vocati a Rege sunt vocati ad maius tribunal, et sic præferendum, ff. De re iudic., l. *contra pupillum*, § fin.; xviii dist., *si Episcopus*. Etiam quia Rex vocat pro communi bono et defensione coronæ, et sic iure gentium obediendum, ff. De iustitia et iure, l. *veluti*; i dist., *ius gentium*; xxiii, q. iii, *fortitudo*, et q. viii, cap. *omni*, et cap. *si nulla*. Nam pro defensione patriæ licitum est patrem interficere, ff. De relig. et sumpt. fun., l. *minime*. Et hæc vera.

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*An vassallus nonlegius duorum dominorum, uno concursu requisitus, utrumque vel alterum, et quem, iuvare teneatur?*

[Cap. xxxiv.]

Quarto quæritur, quid de vassallo nonlegio duorum, quod esse potest ratione diversorum feudorum, De suppl. negl. prælat., *grandi*, Lib. VI. Si uterque dominorum simul requirat eum ut iuvet ipsum in bello, tenetur utrumque, an alterum, et quem, iuvare?

Apparet quod neutrum, cum concursu se impedian, ff. De usufr., l. *quotiens*; De Pœnit., dist. i, § *hoc idem*, vers. *Christus ait*; xxi, q. i, cap. i.

Apparet quod utrumque, alias perdet feudum, quia difficultas præstationis ex parte promissoris non perimit obligationem, ff. De verb. obl., l. *continuus*, § *illud*. Item potest quis duobus dominis servire, ut ff. De operis libert., l. *duorum*. Quidam dicunt locum esse gratificationi, exemplo servi duorum dominorum, qui si viderit utrumque dominum interfici, iuvare poterit quem voluerit, ff. Ad Silianum, l. *si quis in gravi*, § *si cum omnes*. Alii dicunt quod iuvabit priorem dominum, et cui primo iuravit, ut in Vsibus Feudorum, De prohib. feud. alien., l. *imperialem*, § *illud*; ff. Locati, l. *in operis*; C. Qui potiores in pign. hab., l. ii. Nam priorem fidelitatem servare tenetur, l. di., *quia sanctitas tua*; Qui cleri. vel vov., *veniens*.

Tutius tamen est quod primo serviat personaliter, secundo per substitutum, si hoc patiatur natura feudi, C. De caduc. toll., l. una, § *sin autem*. Nec obstat quod iuravit secundo, salva fidelitate primi, quod est de natura hominis nonlegii, quia serviendo secundo per substitutum non nocet primo, quod salvatum fuit in iuramento secundi.

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*An vassallus teneatur iuvare dominum contra patrem, vel pater contra filium?*

[Cap. xxxv.]

Quinto quæritur, an vassallus teneatur iuvare dominum contra patrem, vel pater contra filium. Glossa format quæstionem, xxii, q. v, cap. *de forma*, et tenet quod sic. Nam filius solum vinculo naturæ obligatus est patri, sed vassallus domino vinculo iuramenti, ut in præallegato cap. *de forma*. Hoc

probat textus in Vsibus Feud., in cap. *quemadmodum feud. amit.* Glossa aliquantulum sentit contrarium, in cap. *quoniam milites*, xi, q. iii. Putarem ponderandam qualitatem impendendi subsidii.

*An civis duarum civitatum teneatur unam iuvare contra aliam?*

Sexto quæritur, an civis duarum civitatum teneatur iuvare unam contra aliam. Solutio. Dic ut dictum est in vassallo duorum dominorum.

[Cap. xxxvi.] *An vassallus, vocatus a domino, teneatur ipsum sequi in partibus ultramarinis ad pugnandum contra barbaros?*

Septimo quæritur, dominus vult ire ad partes remotas, pone ultra mare, ad pugnandum cum barbaris, numquid vassallus, vocatus ab eo, teneatur ipsum sequi ad bellum? Solutio. Si dominus est talis status et conditionis quod prædecessores sui et ipse consueverunt illuc accedere, et vassalli ipsum sequi, et tunc tenetur exemplo liberti, qui tenetur ad operas consuetas, ff. De operis lib., l. *opere*, et l. *pæn.*; ff. De pign. act., l. *[qui] vel universorum*. Præstabuntur tamen a domino sumptus moderati, arbitrio boni viri. Si autem sit talis qui non possit nec consuevit, tunc secus, ff. De operis lib., l. *quod nisi*, § *fin.*; ff. De arbit., l. *si cum dies*, § *si arbiter*. Hæc etiam tangit Speculum in Speculo, tit. De feudis, § *ipsum*.

[Cap. xxxvii.]

*An servi teneantur ubique sequi dominum ad bellum?*

Octavo quæritur de servis, an teneantur sequi dominum ubique ad bellum. De his non est dubium, cum in eos dominus plenam habeat potestatem, dummodo non nimis sæviat in eos, ff. De his qui sunt sui vel alien. iuris, l. i et ii.

[Cap. xxxviii.]

*An liberti vocati teneantur sequi patronum ad bellum?*

Nono quæritur, quid de libertis? Solutio. Liberti tenentur ad operas solitas, nec insolitæ possunt eis imponi, ff. De operis lib., l. *quod nisi*, § *si vag.* 6; ff. De procur., l. *sed hæc*, § ii.

[Cap. xxxix.]

*An agricolæ vocati teneantur sequi dominum ad bellum?*

Decimo quæritur, quid de agricolis, an vocati ad bellum a dominis accedere teneantur? Solutio. Agricolæ dividuntur in ascripticios et censitos. Ascripticii dicuntur per scripturam solo astricti, unde in adventiciis duæ interveniunt scripturæ, una ad constituendum, alia ad probandum. Prima qua promittunt domino soli nunquam a solo recedere, alia qua profitetur se ascripticium, et de his scripturis in l. *scimus*, C. De agric. et censitis. Et inter hos



et servos pæne nulla est differentia, ut l. *ne diu*, C. eod. titulo. Et dico pæne, quia differunt, quia servus alienari potest cum peculio, et sine, ut denuo<sup>(n)</sup> l. *ne diu*; ascripticius non sine solo, ut l. ii, C. eod. titulo. Item ascripticii citra domini voluntatem ordinari possunt in possessionibus quibus ascripti sunt, in Authent., De sanct. episc., § *ascripticios*; servi autem non. Item ascripticii, sciente et tacente domino, contrahunt matrimonium, nec conditionem mutant, ut C. De agricol. et censitis, l. ult.; servi autem contrahentes, scientibus dominis et tacentibus, liberantur a servili conditione, ut in Authent., De nupt., § *si vero*. Ex quibus luce clarius apparet quod ius quod habent domini in ascripticios est ius relatum ad possessiones quibus ascribuntur. Et sic apparet quod provocati a domino ad extranea onera personalia, non artantur, nisi ex conventionem aliud sit inductum. Censiti autem sunt qui certæ rei annuatim præstandæ constituti sunt, C. Quib. caus. coloni, l. ii. Etiam in hoc differunt ab ascripticiis, quia ascripticii sunt ascripti ad incertam rem præstandam, puta tertiam vel quartam fructuum, isti autem certæ rei; et de his inferitur ut supra. Per hoc inferitur quod nec coloni nec inquilini necessario artari possint.

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*An confœderatos possit dominus vocare ut ipsum iuvent in bello?*

[Cap. xli.]

Vndecimo quæritur, quid de confœderatis et colligatis, numquid dominus poterit confœderatos provocare ad bellum ut ipsum iuvare teneantur? Solutio. Confœderati sunt plene liberi, licet ad aliqua teneantur ex pacto, ut l. *non dubito*, ff. De captivis. In his tamen ponderanda est conventio, et conventionis modus, ut ad unguem servetur, ff. Depositi, l. i, § *si convenitur*; et l. i, De pactis.

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*An subditi ratione iurisdictionis tantummodo teneantur ad bellum accedere?*

[Cap. xlii.]

Duodecimo quæritur, quid de his qui ratione iurisdictionis tantummodo sunt subditi, non autem sunt vassalli? Solutio. Tales accedere tenentur, nec agent ad deperdita, quia hoc faciunt ex debito. Fallit hoc regulare dictum in quibusdam personis quæ excusantur a muneribus personalibus, quorum quidam excusantur ætate, ut minores et senectute gravati, ut C. Qui ætate, in rubro et nigro; quidam infirmitate, ut C. Qui morbo, per totum; quidam liberorum numero, ut C. Qui numero liber., per totum; quidam propter professionem, ut C. De profess. et medic.; quidam sexu, ut mulieres, et con-similes. Alias stat regula.

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*De personis non astrictis ad bellum, libere accedentibus.*

[Cap. xlii.]

Hæc autem dicta sunt de his personis quæ sunt qualitercumque astrictæ. Restat videre de personis plene liberis ad bellum provocatis. Pro cuius evidentiæ, est attendendum quod accedentibus ad bellum non necessitate nec

debito necessario, nam de debito accedentibus supra tactum est. Quidam accedunt plena liberalitate; quidam accedunt quia tenentur ad antidora; quidam accedunt propter gloriam quærendam et consequendam in bello; quidam accedunt quia locant operas suas, si contractus locati appellari potest, ut stipendiarii; quidam accedunt solum animo spoliandi, ut nuncupati "Saccomanni," quasi manu arripientes et sacco deferentes, et de his videamus. Et primo de primis, ut de plene libere accedentibus.

*An libere accedentes obligent sibi illum in cuius servitium vadunt, etc.?*

Et primo quæritur numquid accedentes libere ad bellum obligent sibi illum in cuius servitium vadunt, si damnum incidunt, utpote si in bello perdant arma, equos, sive capiantur, sive etiam eundo ad bellum sive redeundo? Solutio. Hic est attendendum quod accedentes libere aliquando accedunt prius vocati et rogati a dominis, aliquando motu proprio, non requisiti a dominis. Si accedunt vocati a dominis, tunc habent actionem mandati contra dominum, si sic, ut supra dictum est, contingat, aliquid ipsos perdere, nisi appareat quod causa pietatis, humanitatis, vel parentelæ, hoc faciant, xxiii, q. iii, *non [inferenda] in inferenda*; xi, q. iii, *si dominus*, et cap. *Iulianus*. Si autem opponas, et dicas dominum non teneri, quia talia perdunt casu fortuito, de quo quis non tenetur, De homici., *Iohannes*; C. De pign. act., l. *quæ fortuitis*. Solutio. Iste est casus fortuitus qui potuit et debuit prævideri, quia verisimiliter hæc contingunt in bellis, quia dubius est eventus belli, et ita notat Innocentius in cap. *sicut*, De iureiurando.

[Cap. xliii.]

*An commodatarius teneatur commodanti equos et arma in bello deperdita resarcire?*

Secundo quæritur, quid de commodante tali arma et equos pro eundo ad bellum, numquid, si perdantur, teneatur commodatarius commodanti? Et videtur quod sic, argumento supra proximo a simili, cum hoc etiam prævideri potuerit, ut supra. Solutio. In hoc casu secus, secundum Innocentium, et est ratio differentię, quia in hoc casu commodatarius non excessit fines, quia non est usus nisi ad usum illum ad quem initus est contractus, idcirco non tenetur, ff. Commod., l. *si ut certo*, § *sed interdum*. In mandato autem, licet præscire potuerit quod perdere verisimiliter potuerit, tamen sciebat actionem mandati sibi competere, quia illud evenit ex natura contractus. Et hæc semper procedunt, nisi ex pacto speciali aliud sit inductum.

[Cap. xliv.]

*An conductor teneatur locatori equos et arma in bello deperdita resarcire?*

Tertio quæritur quid de locante equos et arma? numquid, si perdantur in bello, aget locator contra conductorem? Solutio. Dic ut supra in commodante, quia non aget, quia ad hoc conduxit, nec fines excessit, ff. Locat. et conduct., l. *si quis domum*.



*An provocans contra spoliatorem provocati ad bellum accedentis agat vi bonorum raptorum?*

[Cap. xlv.]

Quarto quæritur, quid si provocatus ad bellum, in itinere accedendo ad eius subsidium, spoliatur armis, et equis, et aliis rebus suis? Dictum est quod mandans tenetur mandatario, sed numquid aget mandans contra spoliantem vi bonorum raptorum, vel furti? Apparet quod sic, quia eius interest, quia tenetur actione mandati mandatario. Solutio. Ei contra spoliantem non competunt actiones illæ. Et est ratio, quia vi bonorum raptorum competit illi in cuius bonis erant rapta, ff. Vi bon. rapt., l. ii, § *hac actione*. Actio enim vi bonorum raptorum, vel furti non competit nisi illi qui habuit dominium, vel possessionem, vel detentionem, vel aliquod ius in re, ut est ille cui obligata erat res pignori, et nondum tradita, ff. De præscript. verb., l. si gratuitam, § si quis; ff. De furt., l. si is qui rem, et l. is cui. Spoliatis, ergo, competunt hæ actiones, poterunt tamen agere actione mandati contra mandantem, et mandans, cum solverit, facere sibi cedi actiones contra spoliantem, et tunc aget iure cesso, ut procurator constitutus in rem suam, C. Mand., l. pæn., et l. fin. Hoc etiam tenet Innocentius in præallegato capitulo, *sicut*, De iureiurando.

*An non vocati ad bellum, sed proprio motu accedentes, obligent sibi illum in cuius servitium vadunt?*

[Cap. xlvi.]

Quinto quæritur de accedentibus non provocatis, sed motu proprio. Solutio. Si animo donandi, est clarum, ut puta pietatis, humanitatis, vel parentelæ. Tales non agent, xxiii, q. iii, *non [inferenda] in inferenda*; xi, q. iii, *si dominus*, et cap. *Iulianus*. Si autem animo obligandi eum cuius negotia gerunt, tunc agent actione negotiorum gestorum, et sufficit utiliter cœptum, ff. De neg. gest., l. *sed an ultro*.

*An non vocati ad bellum, sed proprio motu accedentes et utiliter proficiscentes, obligent sibi illum, etiam renitentem et contradicentem, in cuius servitium vadunt?*

[Cap. xlvii.]

Sexto quæritur quid de accedentibus proprio motu, contradicentibus tamen illis in quorum subsidium vadunt, numquid tales agent si utiliter incipiant, et feliciter impleant, ut magis procedat quæstio? Apparet quod sic, ad similitudinem illius qui trahit aliquem invitum de domo ruitura, xxiii, q. iv, *ipsa pietas*. Etiam quia invito concedi potest beneficium, xlv dist., *et qui emendat*. Etiam quia videtur fuisse insanæ mentis contradicendo ne iuvetur, ff. De condi. instit., l. *quidam*; De Pœnitentia, dist. iii, *adhuc instant*; sic tenet glossa in medico medicante alicui contra voluntatem suam. Hoc notat lxxxiii dist., in summa. Contrarium credo in casu proposito per l. ult., C. De neg. gest.; nec propterea reprobo glossam, immo credo, quod verum dicat in infirmo et medico, quia infirmus præsumitur insanæ mentis, cum non vult absolute curari. Sed iste qui contradicit huic, ne veniat ad bellum pro succursu suo, non præsumitur insanæ mentis, nam possibile est quod non confidit de eo, et

dubitat ne prodat ipsum. Nec credo quod glossa procedat in casu in quo infirmus bene vellet sanari, sed nollet istum, immo potius alium, tunc iudicio meo non procederet glossa, nec hoc probant allegata supra. Hoc de accedentibus libere.

[Cap. xlviii.]

*De accedentibus quia tenentur ad antidora, an tales agant contra illum quem iuvant?*

Restat videre quid de his qui vadunt quia tenentur ad antidora, ut puta quia simile, vel aliud, subsidium recepit ab eo. Numquid talis aget contra illum quem iuvat ad deperdita, ut supra? Solutio. Si sic vadit, ut thema supponit, vadit animo dissolvendæ obligationis naturalis, quæ tamen non potest deduci in civilem, nec de ea excipi potest in iudicio. De qua ff. De petit. hæred., l. *sed si lege*, § *consuluit*; De testamentis, *cum in officiis*. Et sic infertur quod vadat non animo obligandi, cum idem actus uniformiter sumptus non possit parere contrarios effectus, ff. De verbor. obligat., l. *si quis*; ff. De conduct. indebiti, l. *cum pars*, § *heres*, et l. *cum heres*<sup>(9)</sup>. Et si dicas hic non est opus dissolutione, quia nulla nata obligatio efficax ad agendum, vel excipiendum, et sic non potest dissolvi, quod non est, ff. De iniusto, rupto, irritato facto testam., l. *nam*; idem quod De desponsatione impuberum, cap. *ad dissolvendum*. Solutio. Licet non sit nata obligatio efficax ad agendum vel excipiendum, ut supra dictum est, tamen nata est talis naturalis quæ dissolvi potest per antidoti recompensationem, ut iuribus statim allegatis, et iste animus dissolvendi impedit nativitatem obligationis, cum in obligatione requiratur animus, ut l. *obligationum*, ff. De oblig. et act., et l. *non figura*, eodem titulo.

[Cap. xlix.]

*De accedentibus propter gloriam consequendam.*

Restat videre de accedentibus propter gloriam consequendam in bello.

*An tales obligent sibi illum in cuius subsidium vadunt?*

An tales obligent sibi illum ad cuius succursum accedunt. Solutio. Si ob hoc solum accedunt, non obligant, nam aut dominus teneretur actione mandati, aut neg. gestorum. Non mandati, cum nullum intervenerit mandatum, ut supponitur in themate quæstionis propositæ, nec actio mandati oritur nisi intercedente mandato, nam licet aliqui dicant quod actio mandati oriatur ex culpa vel dolo intervenientibus, iam suscepto mandato, tamen requiritur præcedentia mandati, ut l. i, ff. Mandati. Vel si dicas quod oriatur ex contractu præcedenti, quod verius, sicut alias dicimus in contractibus innominatis, ut l. *ex placito*, [ff.] C. De rerum permutatione. Non negotii gesti, quia non accessit animo gerendi negotia illius, immo propria, licet in vim consequentiæ alterius negotia gerat, et sic nec illa competet.



*De accedentibus quia locant operas suas.*

[Cap. i.]

Restat videre de his qui locant operas suas, vel verius assumuntur per electionem, constituto salario.

*An tales agant contra conductores ?*

An locatores agant contra conducentes ? Solutio. Tales locant operas et rem, et ideo si conductor utatur solum ad id ad quod conducuntur, non tenetur, ut l. *si quis domum*, ff. Locati et conducti ; et hoc nisi aliud speciale pactum interveniat, vel consuetudo aliud inducat, ut est in Italia, scilicet, quod præstantur emendæ equorum deperditorum in servitio conducentis, alias stat regula, ut supra deductum est.

*De accedentibus animo spoliandi. An talibus competat actio ?*

[Cap. ii.]

Restat etiam videre de his qui accedunt animo derobandi, et de his non est dubium quod talibus non competit actio, cum super re turpi nulla inducatur obligatio, ff. De verbor. obligation., l. *veluti*, et l. *generaliter* ; et \* l. *si ex plagis*.

*An clerici ad bellum accedere possint ?*

[Cap. lii.]

Uterius est videndum quid de clericis, an, scilicet, possint ad bella accedere ? Hanc quæstionem terminavit Gratianus, xxiii, q. viii, *convenior* ; ut glossa ibi recitat in summa. Circa hoc fuerunt opiniones variæ, nam aliqui dicunt quod clerici possunt uti armis defensionis, non autem impugnationis, et sic bellare propter defensam. Alii quod omnibus armis, dummodo impugnent in continenti, et pro seipsis tantum defendendis, et non pro aliis, et pro se in necessitate inevitabili positis, De homicidio, cap. ii ; xxiii, q. viii, *convenior* ; et eadem causa et q. i, in principio. Si autem alias evadere possunt, tunc non possunt, ut cap. *suscepimus*, De homicidio. Alii dicunt quod auctoritate Papæ possunt, alias non. Gandulphus tenet quod personaliter bellare non possunt, sed per alios possunt. Idem videtur sentire Gratianus, xxiii, q. i, § *in registro*.

Concludendo in hoc puncto, clerici vocati a Papa possunt accedere, nam penes Principem est auctoritas bellandi, xxiii, q. i, *quid culpatur* ; eadem causa et q. ii, cap. i, et q. iii, cap. *Maximianus*. In bello autem eis non est licitum occidere etiam paganum propter metum irregularitatis, possunt tamen alios confortare ad bellum, ut pugnent, immo et lapides et alia proicere, dummodo ex eorum ictibus nulli occidantur. Ita notat Innocentius, De restit. spol., *olim* ; et cap. *sententiam*, Ne cler. vel monachi. Vocati ab aliis, maxime principibus sæcularibus, bellare non debent. Pro defensione autem propria, ubi aliter evadere non possunt, licitum est etiam occidere, etiam sine metu irregularitatis, ut in Clem., *si furiosus*, De homicidio. Et

\* *Supplendum* 'Ad legem Aquiliam,'.

bene dico defensa propriæ personæ, secus si defendat alium etiam in continenti, ut patrem, fratrem, et similes personas. Nec huic obstat quod notat Innocentius, in cap. *si vero*, i, De sent. excom. ; ubi tenet quod percutiens clericum hoc casu non est excommunicatus. Nam irregularitas contrahitur etiam sine culpa, ut in iudice iuste occidente, li dist., cap. i ; et nota in cap. *inter opera*, De sponsalibus. Excommunicatio autem non contrahitur sine culpa, immo oportet quod præcedat diabolica persuasio, xvii, q. iv, *si quis suadente* ; ita notat Clem., in dicto cap., *si furiosus*.

An autem imputari possit clerico qui non fugit, sed exspectat invasorem et ipsum se defendendo interficit ? Videtur quod imputari debeat, per textum illius Clementis, cum dicit, " qui mortem aliter vitare non poterat " ; probatur per l. *scientiam*, § *qui cum aliter*, ff. Ad leg. Aquil. ; unde sumpta est <sup>(1)</sup> dicta Clementis. Et hoc ad exemplum Salvatoris, qui fugit in Ægyptum, xxiii, q. iii, § i. Et hoc notat Bernardus in cap. *suscepimus*, De homicidio.

Contrarium credo per l. *in eadem*, ff. Ex quibus causis maiores ; nam ibi æquiparantur hæc duo, non posse recedere, et sine dedecore non posse. Fortius movet, quia in fuga posset occurrere periculum, utpote si caderet, quod frequenter occurrit in fuga, unde non debet se tali periculo exponere, Vt lite non contestata, *accedens*, ii. In hoc tamen credo ponderandas singulas circumstantias, utpote periculum fugæ, qualitatem personæ fugientis, et invadentis, ut si propter fugam verisimiliter mortis periculum incideret, tunc non sit imputandum, alias sic.

*An stipendiarii in Alamannia assumpti, constituto salario per conducentem, agent contra eum qui, dum veniunt, etc. ?*

Quid si stipendiarii sunt assumpti, constituto salario habentes firmam per vi menses, de Alamannia, ut veniant ad serviendum Italico, et, dum veniunt, Italicus perdit statum suum totaliter, numquid stipendiarii agent ad salarium ?

[Cap. liii.]

*An stipendiarii assumpti de Alamannia per civitatem Italicam, salario constituto per annum, qui dum venirent, civitas tyrannice occupata est, agent ad salarium totum, etc. ?*

Quid si stipendiarii sunt assumpti de Alamannia per civitatem Italicam, constituto salario habentes firmam per annum, et interim dum sunt in itinere veniendi, civitas occupatur per tyrannum violenter, numquid agent stipendiarii ad salarium totum, aut pro rata, vel ad quid ? Et videtur quod ad totum, et videntur textus hoc probare, C. De annonis [et protocolis] <sup>(2)</sup>, l. i ; C. De agent. in rebus, l. *matriculam* ; C. De prox. sacr. scrinior., l. *si quis in sacris* ; C. De primipilo, l. i ; ff. De legat., l. *legatum* ; ff. De var. et extra. cognitionibus, l. i, § *divus*.

In contrarium, quod pro rata, videntur textus, C. De erog. milit. annon. ; l. *his scholaribus*, et l. p. in fin. ; et l. *post duos*, C. De advoc. divers. iudiciorum.



Solutio. Hic non debetur pecunia ex contractu puro, immo debetur ex dispositione legis, quia sunt electi ad officium, et ex dispositione legis municipalis datur salarium. Sic ergo non est mere contractus locati et conducti. Et in talibus est attendendum quod aliquando aliqui eliguntur ad officium quod requirit laborem, ubi datur salarium pro labore principaliter, ut sunt stipendiarii. Aliquando eliguntur ad officium ubi datur salarium non solum pro labore sed quia attenditur probitas intellectus et scientiæ, ut est in potestatibus et similibus. Quandoque eliguntur ad officium, et datur salarium pro utroque, scilicet, et pro labore, et pro probitate intellectus et scientiæ, ut in legatis.

Primo casu, datur pro rata temporis quo serviunt, ut l. pæn., C. De erog. milit. annonæ. Secundo casu, si una præstatio tantum erat, tunc totum datur, ut ll. allegatis in contrarium. Si autem non erat una præstatio, habere debet pro anno quo incepit officium, ut l. *post duos*, C. De advoc. divers. iudiciorum.

Tertio casu, aliquando datum in remunerationem laboris et prudentiæ est indivisibile, ut in advocatis, doctoribus, et legatis, et tunc datum totum, ut supra. Aliquando est divisibile, ut in contestabili banderiæ, nam ibi uterque eligitur, scilicet, industria et labor, et recipiunt divisionem tunc, ut stipendiarii recipient pro rata, ut industriosi et ratione industriæ electi habent totum, distinguendo, ut supra.

Est dare quantum casum, ubi quis eligitur ad dignitatem principaliter, ut domesticus Principis. Tunc habet totum, ut l. *si quis in sacris*, C. De proxi. sacr. scri. ; et l. *matriculam*, C. De agent. in rebus ; et l. i, De principibus. Et transit salarium ad hæredes, C. De domesti. et protect., l. fin., lib. xii. Per hoc solvitur quæstio de Comite Lando, capitaneo societatis latrunculorum, assumpto pluries per dominos Italicos ad stipendium, facta firma certi temporis, et constituto salario.

*An in principio vel in fine cuiuslibet mensis solvi debeat stipendiariis?*

[Cap. liv.]

Uterius quæritur quando debeat solvi stipendiariis, an in principio cuiuslibet mensis an in fine. Glossæ aliquæ videntur in advocato qui etiam militat, ut l. *advocati*, C. De advoc. divers. iudicio., quod debeatur a principio. Hoc tenet in l. i, § *divus*, ff. De extraordin. cognitionibus. Idem sentit in l. *properandum*, § *in honorariis*, C. De iudiciis ; et l. *qui operas*, § i, ff. Locat. et conducti. Contrarium tenet in l. i, C. De principibus, lib. xii. Solutio. Aliquando datur pecunia magis pro sumptibus quam pro mercede laboris, et tunc debetur in principio. Tolle exemplum in legatis, probatur hoc, ff. De legationibus, l. *legatum* <sup>(n)</sup> ; ff. Mand., l. *si vero non remunerandi*, § *si [mandato] mandavero* ; C. De legationibus, l. ii, lib. x. Aliquando debetur pecunia pro mercede laboris, et tunc ponderari debet quid actum sit expresse vel tacite, nam si tacite actum sit, tunc videtur quod in principio. Ecce talis

est qui non potest exhibere operas promissas nisi sibi detur pecunia, tunc videtur actum tacite quod debeatur in principio, tunc enim semper inspicimus quod verisimilius est, ff. De regul. iur., l. *semper in stipulationibus*. Si autem non apparet ista verisimilitudo, tunc ex obligationibus quæ descendunt ex contractu salarium debetur in fine temporis, ut notandum in l. *eadem*, C. Locat. et conduct.; et notanda ff. De stip. servorum, l. *si servus communis Mævii*, § *finalis*. Si autem debeatur ex dispositione legis electis ad officia, de quibus supra, ut in proposito, tunc, si est unum tantum salarium, tunc in initio debet præstari, ut l. i, § *divus*, ff. De var. et extraor. cognitionibus. Et si intelliguntur glossæ hoc sentientes, aut est annuum vel menstruum, ut in stipendiariis de quibus loquimur, qui habent vii florenos in mense proposita, et tunc debetur in principio, ut l. *post duos*, C. De advoc. diver. iudic.; et l. i, C. De principibus, lib. xii. Puto tamen quod stipendiarii non habeant effectualiter nisi pro rata temporis quo serviunt, ut supra deductum est, et residuum teneantur restituere, etiam ubi per casum extrinsecum insurgat impedimentum.

[Cap. Iv.]

*An stipendiarii, se absentantes tempore aliquo, etiam de licentia domini, perdant salarium pro tempore illo?*

Quid si stipendiarii pendente tempore stipendii recedunt aliquo tempore, numquid pro illo tempore perdent stipendium, et pone quod cum licentia domini? Solutio. Hic advertendum quod operæ aliquando limitantur respectu temporis non certificati. Tolle in advocatis ecclesiae, qui habent tantum salarium pro qualibet causa quæ occurret ecclesiae illo anno, et tunc non est dubium quod est una obligatio propter unum factum ad quod inducitur, licet præstationes possint esse plures. Idcirco totum debetur, ut præallegata, l. i, § *divus*, ff. De extraor. cognitionibus. Aliquando operæ sunt limitatæ respectu certificati et certi temporis, ut in doctore assumpto ad legendum librum certum, tempore certo. Et tunc aut promittitur totum salarium simul, sed fit distributio solutionis per partes temporis, et tunc etiam una obligatio, ut supra, ut l. *lecta*., ff. De rebus creditis. Aliquando fit annua vel menstrua, et tunc sunt tot obligationes quot menses, ut l. *post duos*, et tunc non habet pro toto tempore, immo singulis mensibus quibus servit cedunt dies obligationum singularum.

[Cap. Ivi.]

*An stipendiarii, qui culpa sua nolunt servire toto tempore firmæ suæ, perdant stipendium totius temporis, aut pro eo tantum quo non servierunt?*

Quid si culpa sua nolunt servire toto tempore, an perdent salarium totius temporis, sic quod nihil habeant etiam pro tempore quo servierunt, an solum perdere debeant pro tempore quo non serviunt? Solutio. Quædam sunt officia, ad quæ quis eligitur, quæ sic sunt individua quod aliquo omissò residuum nihil relevat, et in talibus totum perditur. Tolle exemplum in legatis,



ut C. De legationibus, l. ii. Quædam sunt officia quæ sunt quoad hoc sic dividua, quod aliquo omisso residuum relevat. Tolle exemplum in potestate in stipendiario. Tunc non reddit totum, sed solum pro tempore futuro, tenetur tamen pro futuro tempore ad interesse, ut si nihil intersit, nihil solvat, ff. Locat. et conduct., l. *si fundus*, versiculus [*verisimilis*] *similiter*; et not. in l. *Mævia*, ff. De annu. legatis.

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*An stipendiarius possit servire per substitutum?*

[Cap. lvii.]

Quid si velit servire per substitutum? Apparet quod non possit, quia electa industria personæ, ut l. *inter artifices*, ff. De solut.; l. una, C. De caduc. tollend.; et cap. ult., De offic. delegat., et cap. *is cui*, eod. tit., Lib. VI. In contrarium videtur, quia potest quis per alium quod per se, ut regula *potest quis*, cum similibus. Solutio. Debet ponderari modus assumptionis, nam aliquando dominus vel civitas assumit contestabilem, cui dat banderiam et stipendium, et contestabilis debet sibi eligere sub banderia quos voluerit, et tunc non currit quæstio inter civitatem et stipendiarios, quia civitas nihil eligat nisi industriam et laborem contestabilis, ipsi tamen tenentur. Aliquando civitas eligit sibi stipendiarios quos reponit sub singulis banderiis, et tunc in contestabili eligitur industria et opera. Ex capite industriæ non posset dare substitutum, ut iuribus statim allegatis. In stipendiariis eligitur tantum opera et labor, tunc in his quorum opera eligitur, et non industria, potest quis dare substitutum, ut notat Innocentius, in cap. *cum Bertholdus*, De re iudicata. Hostiensis ibi contrarium. Credo opinionem Innocentii veriore, ponderatis iuribus statim allegatis, et eorum mente. Tutius tamen est quod fiat cum consensu domini, ut salvetur utriusque opinio.

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*An stipendiarius perdat stipendium tempore quo infirmatur?*

[Cap. lviii.]

Quid si stipendiarius infirmetur? Solutio. Servire videtur, ut debeatur salarium, ut l. *si heres*, § *Stichus*<sup>(7)</sup>, ff. De statuliberis.

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*De spoliis et capturis quæ sunt in bello. An aliquis capiens in bello efficiatur dominus personæ captæ et rei, et an sit locus postliminio?*

[Cap. lix.]

Quinto videndum restat de spoliis et capturis quæ in bello fiunt.

Et primo quæritur, an in bello aliquid capiens efficiatur dominus personæ captæ et rei, et an sit locus postliminio? Solutio. In bello publico, auctoritate Principis inducto, de quo supra dictum est, hæc omnia procedunt, nam capiens efficitur dominus, capti efficiuntur servi, ut l. *hostes*, ff. De captivis; et l. *hostes*, ff. De verb. significatione. Si autem bellum non sit ex edicto Principis, licet alias iustum, ut cum sit pro defensione rerum suarum, tunc si ille qui bellum indicit habet iurisdictionem super eo pro quo bellum indicit, potest statuere

quod quilibet capiens aliquid in bello illo efficiatur dominus rerum captarum, et personam detineat donec præsentet superiori. Ita tenet Innocentius in cap. *sicut*, De iureiurando, remittens super hoc ad notam in cap. *a nobis*, De sent. excommunicationis. Subdit Innocentius quod, si non fecerit aliquam constitutionem, poterit illum damnare de invasione facta infra fines suæ iurisdictionis, ut in Authent., *qua in provincia*, C. Vbi de crim. agi oporteat. Subdit quod, si bellum indicens nullam habet iurisdictionem, sed solum defendit se et bona sua, tunc non licet sibi invasorem suum capere, et captum detinere, quia solum licet sibi se defendere, tamen cum moderamine inculpatæ tutelæ, C. Vnde vi, l. i; De restit. spoliatorum, *olim*. Subdit quod, si invadat res invasoris sui, quod invasori non competit vi bonorum raptorum, nec iniuriarum, quia obstat exceptio paris criminis. Hæc omnia, ut dixi, notat Innocentius in cap. *sicut*, De iureiurando. Primum dictum Innocentii puto verum indistincte, quia dominus propter delictum per constitutionem suam potest quem privare dominio rei suæ et in alium transferre. Secundum autem dictum non credo verum indistincte. Immo credo quod, si civitas non recognoscens superiorem de facto indicat bellum alii, etiam non recognoscenti, et sic quælibet sit hostis populi Romani, quod, sine aliqua constitutione, ibi vindicet locum quod in bello indicto ex edicto Principis, nam hoc evenit ex iure gentium antiquis moribus introducto, salvo quam de personis, quia modernis temporibus non procedit quod capti in bellis istis efficiantur servi nec vendantur, nec in talibus locus est hodie postliminio. Tertium dictum legendo, illam decretalem aliquando reprobavi per rationem illam. Nam spoliatus ante omnia est restituendus, nec opponi potest exceptio criminis, ut in cap. *in literis*, et cap. *item cum quis*, De restit. spoliatorum. Non ergo excipiet primus spoliatus de crimine, nec de alio etiam maiori. Nunc scribendo credo salvari posse glossam Innocentii duobus modis. Primo, quia non loquitur Innocentius in casu in quo spoliatus ultimus intentat interdictum Vnde vi, immo loquitur in casu in quo intentat Vi bonorum raptorum, vel Iniuriarum, quæ, ut claret, multum differunt. Vel dic quod Innocentius non intelligit quod opponatur exceptio criminis in modum criminis, sed in modum alterius spoliationis, de qua excipi potest contra agentem etiam interdicto Recuperandæ, ut repellatur exceptione spoliationis, ut probat textus in cap. *super spoliatione*, De ordine cognitionum.

[Cap. ix.]

*An capti in bello duarum civitatum efficiantur servi, et dominium eorum quærat?*

An in istis bellis quæ facit una civitas contra aliam possint dici hostes, ut servi efficiantur capti, et dominium eorum quærat? Apparet quod non, ut l. *si quis ingenuam*, in fin., ff. De captivis. In contrarium videtur, nam quælibet civitas per se facit populum, et sic videtur quod sint hostes, sicut populus Christianus et Saracenus. Solutio. Quando est contentio inter duas civitates quæ sunt sub eodem domino, non est locus captivitati et postliminio,



ut l. *si quis ingenuam*, ff. De captivis. Sed quando est contentio inter duas civitates quæ non recognoscunt superiorem, et pono, ut tollatur omne dubium, quod quælibet sit hostis Imperii, quia rebellis, tunc iure gentium, antiquis moribus introducto, est locus captivitati et iuri postliminii, sed secundum mores moderni temporis, et consuetudines antiquitus observatas inter Christianos, quantum ad personas non servatur postliminium, nec venduntur personæ, nec servæ efficiuntur.

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*An capta in bello efficiantur capientium ?*

[Cap. lxi.]

An capta in bello efficiantur capientium ? Et videtur quod sic, per l. *si quid in bello*, ff. De captivis. Contrarium videtur probare l. *si captivus*, eod. titulo. Solutio. Lex *si quid in bello* loquitur in rebus mobilibus, contraria de immobilibus, sed opponitur, scilicet, quod mobilia publicentur, ut cap. *dicat*, xxiii, q. v. Solutio. Dico quod efficiuntur capientis, sed tenetur ea assignare duci belli, qui distribuet secundum merita. Et hæc vindicant sibi locum in his in quibus non habet locum postliminium, ut l. ii, ff. De captivis.

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*An in bellis sit licitum insidiari ?*

[Cap. lxii.]

Vltius quæritur, an in bellis sit licitum uti insidiis ad victoriam consequendam. Videtur quod sic, nam inquit Augustinus in libro Quæstionum, "Cum bellum iustum suscipitur, utrum aperte pugnet quis, an insidiis, nihil ad iustitiam interest." Hoc probatur per id quod habetur Iosue viii capitulo. In contrarium videtur, nam scribitur Deuteronomii xvi, "Quod iustum est iuste exsequeris." Sed per insidias exsequi est iniuste exsequi, cum sapiat dolum, et taliter agitata per actionem de dolo rescinduntur, ut ff. De dolo ; C. eod. tit., per totum. Præterea insidiæ repugnant felicitati, et rumpunt fidem quæ servanda est etiam hosti, ut Augustinus ad Bonifacium, et transumptum in capitulo, xxiii, q. i, *noli* ; xxxiii, q. v, *quod Deo pari consensu*. Præterea scribitur Matthæi vii cap., "Quæ vultis ut faciant vobis homines, vos eisdem facite," et in principio Decretorum. Et hoc observandum ad omnes proximos. Cum igitur nullus vellet insidias sibi fieri, ergo nec aliis facere debet. Solutio. Hic attendendum est quod proprie insidiæ dicuntur, quæ tendunt ad fallendum aliquem, sed dupliciter contingit aliquem falli, verbo, vel facto, alterius. Vno modo, si dicatur falsum, ut decipiatur, vel ut aliquid promissum non attendatur, et tunc sic utendo insidiis semper est illicitum, nam inter hostes sunt quædam fœdera quæ servanda sunt, ut inquit Ambrosius in libro De Officiis. Alio modo potest falli, dicto vel facto nostro, quia non aperimus sibi propositum nostrum nec secreta nostra. Et hoc modo licet fallere, nam nec semper secreta Sacræ Scripturæ sunt pandenda, ne irrideant, iuxta illud Matthæi [x] vii cap., "Nolite sanctum dare canibus." Immo hoc est præcipuum mandatum inter militaria documenta, ut secreta non revelentur hostibus, et sic etiam determinat Beatus Thomas, Secunda Secundæ, quæstione xl ; et glos.,

xxiii, q. ii, cap. *dominus*, dicit indistincte, uti posse, dummodo non rumpamus fidem, ut cap. *noli*, eadem causa, et q. i. Hoc idem tenet glossa in cap. *utilem*, xxii, q. ii; allegat canon. *in mandatis*, xliii dist.; ff. De captivis, l. *nihil interest*; C. De commerc., l. ii; xiv, q. v, *dixit*; De consecra., dist. ii, *dixit dominus*.

[Cap. lxi.]

*An in festis licitum sit bellare?*

Consequenter quæritur, an in festis sit bellandum? Et videtur quod non, nam festa sunt inducta ut quis vacet divinis, De consecra., dist. ii, § *pronuntiandum*; De feriis, cap. ult.; C. eod. tit., l. *dies*, et l. *ultima*, et probatur Exodi xx capitulo. Præterea Isaïæ lviii cap., reprehenduntur qui in diebus ieiunii repetunt debita, et committunt lites, pugno percutientes. Multo magis igitur in festis bellantes sunt reprehendendi. Præterea nihil inordinate agendum est ad vitandum temporale incommodum. Ergo. Præterea videtur text. in cap. i, De treug. et pace.

In contrarium videtur, nam legitur primo Maccabæorum ii cap., "Cogitaverunt laudabiliter dicentes, omnis homo qui venit ad nos in die belli, in die Sabbatorum pugnemus adversus eum." Solutio. Beatus Thomas, Secunda Secundæ, Quæstione xl, tenet quod in festis bellari possit, necessitate urgente, ipsa autem cessante, cessandum est, quod probat per id quod habetur Iohannis vii cap., "Mihi indignamini, qui totum hominem sanavi in Sabbato?" Et sic infert medicos medicari posse propter salutem privatam hominis, multo magis autem procuranda est utilitas publica. Goffredus et Hostiensis, in cap. i, De treug. et pace, dicunt quod die Iovis non est bellandum, quia Dominus illa die ascendit ad cœlos, et cœnam fecit cum discipulis, De consecra., dist. i, *porro*; et De consecra., dist. [ii] iii, *litteris*. Die Veneris non, propter reverentiam passionis Domini; die Sabbati non, quia discipuli ea die latitaverunt propter metum Iudæorum, et quia corpus Domini latuit in sepulchro, De consecra., dist. iii, *Sabbato*. Die Dominico non, quia fere omne insigne fecit Dominus illa die, lxxv dist., *quod die*, et propter reverentiam resurrectionis. Credo ponderandam necessitatem urgentem, ut supra tactum est. Textus Nicolai Papæ est in cap. *si nulla*, xxiii, q. viii.

[Cap. lxiiv.]

*An consecutus in bello totum suum interesse possit iterum adversarium, etc.?*

Consequenter quæritur, quid si aliquis in bello consecutus est totum interesse suum, an iterum possit in iudicio convenire adversarium suum, vel adhuc possit bellum indicere contra eum? Videtur quod iterum convenire possit, nam captum in bello est pœna contumaciæ, ergo nihilominus agere potest, ff. De tab. exhib., l. *locum*, § pænultima. Item res non est soluta pro debito, immo in bello quæsitum dominium, xxiii, q. v, *dicat*; et q. vii, *si de rebus*; ff. De acquir. rer. dom., l. *naturaliter*. Item quia contra contumacem iurari



potest in infinitum, ff. De rei vind., l. *qui restituere*. Glossa in cap. *dominus*, xxiii, q. ii, tenet contrarium, per regulam *bona fides*, ff. De reg. iuris.

Ego non credo glossam veram indistincte, immo distinguere debet an ab eodem, an ab aliis. Si ab eodem, procedat opinio Iohannis, si ab aliis, aut habentibus causam ab eo, et tunc idem, ut C. De evict., l. *emptori*; vel haberet regressum contra primum, ut C. De usur. rei iudic., l. ii, § finali. Alias autem licitum est pluries idem solvi, ut l. iii, § *condemnatio*, ff. De tab. exhib.; et Instit., De legat., § *si res*. Sic notat glossa in regula *bona fides*, ff. De reg. iur.; et ita etiam notat Io. [Fauc.] Faentinus<sup>(7)</sup> in dicto cap. *dominus*.

*An morientes in bello salventur?*

[Cap. lxv.]

An morientes in bello salventur? Solutio. Morientes in bello Ecclesiae pro ipsius defensione consequuntur coeleste regnum. Hoc probant duo textus specialiter, cap. *omni*, xxiii, q. viii, et fuit Leonis Papae directum ad regem Francorum; et cap. *omnium*, xxiii, q. v, et fuit Nicolai directum exercitui Francorum. Decedentes autem in aliis bellis alias iustis, etiam salvantur, dummodo decedant sine mortali; si autem in bello illicito, et cum illo solo mortali decedant, pereunt, De Pœn., dist. v, *fratres*.

*An pro rebus et possessionibus ecclesiae liceat bello corporali bellare, etc.?*

[Cap. lxvi.]

An liceat bello corporali defendere possessiones ecclesiae, et super hoc convocare milites? Planum quod sic. Probant textus xxiii, q. iii, cap. *Maximianus*; xv, q. vi, *auctoritatem*; lxiii dist., *Adrianus*; xxiii, q. viii, cap. *igitur*, et cap. *hortatu*; et glossa *magistra* in capitulo *auctoritatem*, xv, q. vi. Probat textus in cap. *dilecto*, De sent. excom., Lib. VI.

*An liceat episcopis ad bellum accedere sine licentia Papae?*

[Cap. lxvii.]

An liceat episcopis ad bellum accedere sine licentia Papae? Dicunt quidam indistincte quod non, per canones, qui videntur hoc expresse dicere, xxiii, q. viii, *quo ausu*, et cap. *si vobis*, et cap. *si quis episcopus*. Licet illa capitula habeant varios intellectus, tamen hoc credo verum, si vocentur, vel sponte ad bella aliena, maxime saecularia, accedant, secus si defendant iura sua.

*An praelati pro temporalibus quae tenent ab Imperatore, etc.?*

[Cap. lxviii.]

An praelati pro temporalibus quae tenent ab Imperatore teneantur solvere tributum pro bellis ab eo indictis? Et dicendum quod sic, ut probatur xxiii, q. viii, *si*, § *ecce*, cum duobus §§ sequentibus, usque ad § *quamvis*.

[Cap. lxi.]

*An captis in bello iusto sit miserandum?*

An captis in bello iusto sit miserandum? Dicendum quod sic, nisi pariendo timeatur perturbatio pacis. Probatur in cap. *noli*, xxiii, q. i, in fin., et per illud capitulum expositum, ut intelligebat Hugolinus, fuit amputatum caput Conradino.

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[Cap. lxx.]

*An Ecclesia debeat indicare bellum contra Iudæos?*

An Ecclesia bellum debeat indicare contra Iudæos? Dicendum quod non, cum ubique parati sint servire, nec persequantur Christianos. Secus de Saracenis, qui Christianos persequuntur. Hic est textus xxiii, q. viii, *dispar*, et ibi notat glossa quod nec etiam Saracenis forent indicenda, nisi Christianos persequerentur.

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[Cap. lxxi.]

*An degentes in bello qui pugnare non possunt, etc.?*

An degentes in bello, qui pugnare non possunt, gaudeant immunitatibus bellantium? Et dic quod sic, dummodo alias consilio sint utiles, ut nota in cap. *ex multa*, De voto.

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[Cap. lxxii.]

*An liceat prælatis ratione temporalis iurisdictionis, etc.?*

An liceat prælatis ratione temporalis iurisdictionis bella indicare, et eis interesse, et alios hortari ad prælium? Et dic quod sic, ut notat Innocentius in cap. *quod in dubiis*, De pœnis.

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[Cap. lxxiii.]

*An liceat prælato pro iniuria subditi, etc.?*

An liceat prælato pro iniuria subditi sui, de qua non fit iustitia, bellum indicare, et alios quam iniuriantes in bello capere? Et dic quod sic, ut notat Innocentius in cap. *dilectis*, De appellat.; et cap. *sicut*, De iureiurando.

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[Cap. lxxiv.]

*An delegatus Papæ possit bellum indicare?*

Hoc est dicere, an possit invocare brachium sæculare? Quæstio est vulgata, et tractatur in cap. *significasti*, De offic. deleg., per Innocentium.

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[Cap. lxxv.]

*An bella indicta per Ecclesiam contra excommunicatos sint meritoria?*

An bella quæ indicit Ecclesia contra excommunicatos sint meritoria? Et dicendum quod sic, et in illis licitum est prælatis et singulis hortari alios ad pugnandum. Probant textus xxiii, q. v, *ad omnium*, et cap. sequenti; et q. viii, cap. *igitur*, usque ad § *ecce*; et q. iv, cap. *sicut excellentiam*.

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*Quot sint genera bellorum corporalium ?*

[Cap. lxxvi.]

Consequenter quæritur, quot sint genera bellorum corporalium, de quibus reperitur in iure expressum. Solutio. Septem reperiuntur iure expressa.

Primum Romanum appellatur, quod fideles contra infideles, et hoc iustum est. De hæreticis, *excommunicamus*, ii. Et dicitur Romanum quia Roma caput fidei, xxiv, q. i, *hæc est fides*, et cap. *quoniam*; De summa Trin., cap. pænultima. Et sic potest intelligi l. *hostes*, ff. De captivis.

Secundum, quod fit auctoritate iudicis legitimi, habentis merum imperium contra contumaces et rebelles, ut l. *continet*, ff. Quod met. causa; l. iii et l. iv, ff. De iurisd. omn. iudic.; C. Ne quis in sua causa, l. una. Et hi proprie non dicuntur hostes, nam quod de suo ad nos pervenit nostrum efficitur. Non autem e converso sic intelligitur, l. v, § *in pace*, ff. De captivis.

Tertium dicitur bellum præsumptuosum, quod faciunt iudici inobedientes, De Pœn., dist. iii, § i, ad finem; De maiorit. et obed., cap. *si quis venerit*; ff. De rei vind., l. *qui restituere*; ff. Ne vis fiat ei qui in pos. missus, l. iii; C. De sedititiosis, l. i, in fine.

Quartum dicitur bellum, quod licitum est quandocunque iuris auctoritate concedatur. Et est licitum quoad illum cui conceditur, ut xxiii, q. ii, cap. *si dominus*; De sent. excom., *si vero i*, § *nec ille*; C. Quando lic. unicuique sine iudi. se vindicare, l. i et l. ii; et etiam proximi et vicini, ut De sent. excom., *dilecto*, Lib. VI.

Quintum, illicitum, quoad illos qui hoc faciunt contra iuris auctoritatem, ut qui se defendit contra iudicis auctoritatem et iuris, ut De sent. excom., *perpendimus*, et cap. *contingit*, et cap. *in audientia*.

Sextum, voluntarium, quo utuntur principes sæculares nostri temporis sine principis auctoritate. Et hoc iniustum, quia nec sine principis auctoritate licet arma portare, C. Vt armor. usus, in rubro et nigro, lib. [xii] xi; in Authent., De man. prin., collat. iii; in Authent., De armis, collat. vi. Immo contra facientes incidunt in legem Iuliam maiestatis, ff. Ad leg. Iul. maiest., l. iii.

Septimum dicitur necessarium et licitum, quod faciunt fideles, iuris auctoritate se defendendo contra ipsos invadentes, nam vim vi repellere licet, ff. De iustit. et iure, l. *ut vim*, cum similibus. De his per Hostiensem, De homicidio, *pro humani*, Lib. VI; per Archidiaconum, in cap. *iustum*, xxiii, q. ii.

Ex his infertur quæ bella sint licita, et quæ illicita. Nam licita dicuntur ratione indicentis, illius contra quem, rei, et causæ, et iuris permittentis. Illi-cita econtra. Causa autem una generaliter iustificat, scilicet, contumacia iniuste resistentis. Cum enim ab eo qui obnoxius est iustitia haberi non potest, tunc licet bellum indicare, nam in subsidium recurritur ad illud suffragium, xxiii, q. i, *quid culpatur*, et cap. *noli*; xxiii, q. viii, *si nulla*; ff. De usuf., l. *si ususfructus*. Et de hoc, scilicet quod sit licitum, notatur per Innocentium, De resti. spol., *cum olim*, i; per Hostiensem, in Summa, De treu. et pace, § *quid si iustum*; per Beatum Thomam, in Secunda Secundæ, quæstione xl, articulo primo, secundo, et tertio; per Ægidium, in libro De regimine principum, in fine.

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[Cap. lxxvii.]

*De Bello Particulari quod fit ob tutelam sui, et est quartus tractatus tertii principalis.*

**V** Iso supra, tertio proximo principali tractatu, de Bello Vniversali Corporali, restat nunc, quarto, videre de Bello Particulari quod fit ob tutelam sui, et in ipsius tractatu sic procedam. Nam primo demonstrabo, quid sit. Secundo, quot sint species eius. Tertio, quo ordine inductum sit. Quarto, quibus liceat. Quinto, contra quos. Sexto, pro quibus liceat. Septimo, qualiter liceat. Octavo, quis sit ipsius finis.

[Cap. lxxviii.]

*Quid sit Particulare Bellum ?*

Circa primum, cum quæritur, quid sit bellum ob tutelam sui particulariter indictum, dico quod est "contentio exorta propter difforme humano appetitui præsentatum ex violentiæ particularis illatione proveniens, ad ipsius exclusionem tendens." Hæc probantur mentaliter per textum, l. *ut vim*, ff. De iustit. et iure ; et l. *[qui] scientiam*, § *qui cum aliter*, ff. Ad leg. Aquil. ; et l. i, C. Vnde vi ; et l. iii, § *si quis*, ff. De vi ; et cap. *olim*, De resti. spol. Et dixi "contentio," nam contentio ponitur pro genere, ut posita est in definitione belli generaliter sumpti, ut supra primo tractatu in principio. Secundo dixi "exorta propter difforme," etc., et illud ponitur loco differentiæ, nam per hoc differt a bello universali et aliis speciebus belli. Tertio dixi "ad ipsius," etc. Hoc est causa finalis ipsius belli.

[Cap. lxxix.]

*Quot sint species Particularis Belli ?*

Circa secundum, cum quæritur, quot sint ipsius species, dico quod sunt duæ, nam quoddam iustum, quoddam iniustum, ut etiam divisi Bellum Vniversale. Bellum autem Particulare iustum est duplex, nam quoddam fit propter tutelam veri corporis, vel adhærentium, sive contingentium verum corpus. De hoc in præsentī tractatu discutiam. Aliud fit propter tutelam corporis mystici, vel partis, ut dicimus in universitate, quæ appellatur corpus, et singuli appellantur membra et partes, ff. Quod cuiuscunque univer., l. i ; ff. Ad municip., l. *quod maior* ; ff. De in ius vocand., l. *sed si hac*, § *qui manumittitur* ; De excess. prælat., l. *cum dilecta*, et ibi nota. Si igitur universitas propter defensam civis sui ab extraneo oppressi, deficiente iustitia iudicis opprimentis, bellum indicat, hoc appellatur "Particulare propter tutelam mystici corporis, sive partis," et hoc appellatur "Represalia," de qua in Authent., Vt non fiant pignor., per totum ; De iniur., cap. uno, per totum, Lib. VI. Et de hoc bello dicetur infra tractatu proximo. Bellum autem iustum, particulare, ob tutelam veri corporis indictum, est contentio exorta propter difforme humano appetitui præsentatum, proveniens ex illatione violentiæ particularis a privata vel publica persona, extra officium iniuste inferente, ad ipsius exclusionem tendens, cum moderamine inculpatæ tutelæ, ut hæc probantur in l. i, C. Vnde vi ; cum ibi nota. Iniustum autem est ubi prædicta, vel aliquod prædictorum, deficiunt, ut in [præcedentibus] sequentibus declarabitur.



*Quo iure introductum sit particulare bellum ?*

[Cap. lxxx.]

Circa tertium, cum quæritur, quo iure hoc proveniat, et competat, glossa quæ est in l. *ut vim*, ff. De iustit. et iure, super verbo "iure," dicit "iure fori, non iure cœli." Si glossa intelligit quod iure fori proveniat hoc bellum, credo quod glossa non dicat verum. Si autem glossa intelligit quod iure fori indici possit impune, credo quod glossa dicat verum. In eo autem quod glossa dicit "non iure cœli," credo quod glossa dicat falsum. Redeo ad singula, et dico quod bellum ob tutelam sui provenit a iure naturali, non autem a iure positivo, civili vel canonico. Quod hoc sit verum probatur sic. Nam natura productiva cuiuscunque tendit in ipsius conservationem, donec se extendunt vires naturalis agentis, et nititur in expulsionem cuiuscunque contrarii, et si secus contingat, hoc contingit propter defectum virium naturaliter agentis, et superabundantiam agentium in contrarium. Nequaquam autem hoc contingit ex intentione agentis naturalis, productivi et conservativi, immo contra intentionem, cum semper contrariis resistat, quantum potest. Hoc patet ex sensatis, inducendo per singula naturalia. Nam in elementalibus quæ agunt et patiuntur adinvicem hoc patet. Nam passum resistit agenti, et reagit in ipsum, solum ad finem conservationis sui esse, et destructionem agentis in contrarium. Et agens corporale materiale semper agendo repatitur, ut inquit Philosophus, iii Physicorum, et secundo De generatione. Hoc patet in istis inanimatis, hoc in plantis, nam privata ipsarum natura tendit in conservationem ipsarum et vitam, et contrariorum expulsionem, hoc in brutis, et quare non sic in rationali creatura hoc contingat, immo fortius cum ipsa ceteris sit nobilior, et in ipsam, ut finem, alia ordinentur, ff. De usuris, l. *in pecudum*<sup>(9)</sup>. Provenit ergo defensa ex instinctu naturali. Hoc probat textus in Clem., *pastoralis*, § *ceterum*, De sententia et re iudicata. Ibi dicit textus, "defensionis quæ a iure provenit naturali." Hoc sentire videtur glossa quæ est in l. *scientiam*, § *qui cum aliter*, ff. Ad leg. Aquiliam. Ibi dicit glossa, "iura permittunt eo ipso quod non prohibent." Hoc probat textus in l. *itaque*, ff. Ad leg. Aquiliam. Ibi dicit textus, "adversus periculum naturalis ratio defendere permittit." Concludo igitur ex hoc passu quod hoc bellum, restringendo ad indictum ob tutelam corporis sui, provenit ex iure naturali et ipsius instinctu, sed ius positivum approbat, vel non prohibet, ut dicit glossa in l. *scientiam*, § *qui cum aliter*. Nam aliqua provenientia instinctu naturæ iura positiva puniunt, ut patet in carnali copula; nam simpliciter coitus provenit ex naturali instinctu, sed tamen quosdam coitus damnat lex. Et in hoc ius positivum limitat et qualificat actus provenientes a iure naturali. Sic in singulis actibus a natura provenientibus, nam naturaliter quis appetit cibum et potum, et tamen lex canonica limitat. Nam quosdam cibos certis temporibus inhibet. Verum est quod lex positiva etiam qualificat modum defensæ, ut patet in l. i, C. Vnde vi; et patebit per infra notanda. Concluditur igitur hoc provenire a iure naturali, sed approbato a iure positivo, tam civili quam canonico, et etiam qualificato et modificato eodem. Et in hoc forte salvari potest glossa quæ est in l. *ut vim*, ut sic intelligatur.

Secundo dicebat glossa, "non iure cœli." Videtur sentire glossa quod iure divino non permittatur vim vi repellere. Pro hac opinione glossæ videntur facere textus, nam scribitur Lucæ vi, "Si quis te percusserit in unam maxillam, præbe ei et aliam"; xxiii, q. i, in principio. Scribitur etiam "Si quis angariaverit te mille passus, vade cum eo duo millia," [Iohannis vi, et] Matthæi v. Scribitur etiam ad Romanos, xii cap., "non vos defendentes, sed date locum iræ." Christus etiam dixit Petro volenti eum defendere, "Converte gladium tuum in vaginam," Matthæi xxvi; et habentur xxiii, q. i, in principio. Hæc potuerunt movere glossæ ad tenendum quod non liceat iure poli. Sed credo quod glossa non dicat verum, quod aperte demonstrari potest. Et primo sic. Ille actus est licitus iure divino qui est consonus caritati, sed defensa suiipsius est huiusmodi. Ergo. Probatur maior, nam caritate posita, excluditur quilibet actus lege divina reprobis, cum ipsa se non compatiatur cum reprobo, cum sit ipsa fundamentum cuiuslibet liciti. Probantur hæc De Pœnit., dist. ii, [si] *radicata*, et cap. *caritas est, ut mihi videtur*. Et secundum in cap. *quia radix*, distinctione eadem, probatur minor. Nam præcipuus actus caritatis est diligere proximum sicut seipsum, ut in canonibus proximis, et cap. *caritas est, § proinde*, De Pœnit., dist. ii, ergo implicat dilectionem sui, et sui conservationem, si sic, ergo defensam. Ergo iure poli licet seipsum defendere. Præterea lege divina licitum est proximum defendere a morte etiam contra voluntatem suam. Ergo multo fortius iure divino licet seipsum defendere. Consequentia tenet per inducta supra proximo. Probatur antecedens per textus xxiii, q. iv, *ipsa pietas*, et cap. *displicet*. Præterea lex divina inhibet quem voluntarie tendere ad destructionem suiipsius. Hoc solum intendo et dico. Hoc solum intendo, nam si ordinate tendat in aliud lege divina approbatum, licet illud consequendo consequenter sequatur destructio, hoc non est inhibitum, utpote quis, ut consequatur statum beatitudinis æternæ affligit corpus suum, nulli dubium quin afflictio sit corporis destructoria, tamen non tendit in hoc finaliter, sed in fugam vitiorum carnalium, et consecutionem status æterni. Sic etiam dici posset de trucidatis voluntarie propter fidem catholicam, nam ipsi non intendunt finaliter ad destructionem sui corporis, immo defensam fidei, [quam] pro qua voluntarie exponunt se morti temporali, quod licet lege divina, sed se non defendens a morte, cum potest, se voluntarie occidit et in destructionem sui tendit, ergo lege divina inhibitum. Probatur maior, nam lege divina damnati reputantur qui sic seipsos occiderunt, ut dicimus de Iuda, et similibus. Probatur minor, nam se non defendens a morte, cum potest, nec subsit aliquis de casibus antedictis, nec hoc proveniat ex pusillanimitate, sui mortem appetit, et per alium se occidit, et sic perinde ac si per seipsum, iuxta regulam "qui per alium," ut regula *qui per alium*, De reg. iur., Lib. VI. Præterea lex divina non destruit totaliter actus provenientes a iure naturali, sed ipsos modificat et refrænât. Hoc patet per singulos discurrendo, nam non penitus inhibet cibum et potum, non copulam, nec similia, sed ipsos actus modificat et refrænât, extremitates reiciendo, medium approbando, ut etiam lex moralis, ii Ethicorum, iii et iv. At si lex divina inhiberet totaliter defensam suiipsius, cum actus ille



proveniat ab instinctu naturæ, totaliter destrueret actum naturæ, quod est absurdum, ut supra. Præterea lex canonica hoc permittit, ergo divina non inhibet. Probatur antecedens per De restit. spol., cap. *olim* ; et Clem., *pastoralis*, § *ceterum*, De re iudic. ; clarius per Clementem, *si furiosus*, De homicidio. Consequentia tenet, nam lex canonica subalternatur legi divinæ, et sic sibi invicem contra dicere non possunt, nam in eundem tendunt finem, licet varie. Nam lex canonica tractat de gubernatione monarchiæ mundanæ, ut societas humana conservetur in universo, quod etiam tractat lex civilis, sed canonica ulterius tendit, scilicet, disponendo et præparando ad statum æternæ beatitudinis, in quam tendit lex divina, et sic necesse est, indemnitate finis attentata, omne inhibitum lege divina fore inhibitum lege canonica. Et sic, prætermisissis aliis quæ infinita possent induci, restat concludendum quod glossa non dicat verum, cum dicit iure cœli non permitti defensam suiipsius.

Ad auctoritates autem in contrarium inductas respondetur, ut respondet magister Gratianus, xxiii, q. i, § *his ita*. Respondetur, videlicet, quod intelligentur de interiori cordis præparatione, non autem de interiori ostensione corporis, nam interius debet humilitatem cordis habere, ut probat Augustinus in Sermone de puero centurionis, sic inquit, " Paratus debet esse," etc. Vide in cap. *paratus*, xxiii, q. i.

Ex his infertur tertium, videlicet, unde insurgat hoc bellum, et quo iure permittatur.

*Quibus personis liceat hoc particulare bellum indicare ?*

[Cap. lxxxi.]

Circa quartum, videlicet, quibus competat et liceat, est videndum. Pro cuius evidentiâ præmitto quod aliud est quærere quibus competat defensa suiipsius, et aliud est quærere quibus competit bellum supra definitum, inductum propter defensam. Si quæramus cui competat defensio, dico quod omnibus entibus naturalibus genitis et corruptibilibus. Et dico genitis et corruptibilibus, nam corporibus cœlestibus non competit defensio, propterea quia non possunt pati ab aliquo contrario agente, cum illa corpora non sunt receptiva peregrinarum impressionum, ut ait Philosophus, secundo Cœli et Mundi, cum sint sine materia quæ est materia generationis et corruptionis, ut ibidem. Et sic non est opus defensa, cum sint impassibilia. Omnibus autem materialibus competit ex principiis naturalibus defensio, cum sint passibilia, et provenit illa defensio ex iure naturali, quod est vis quædam insita rebus, similia de similibus procreans. Nam similia procreando conservat seipsam in specie quod fieri non potest perpetuo individualiter, et etiam individualiter agendo nititur corrumpere contrarium sibi resistens et econtra. Et iste est primus modus iuris naturalis, de quo glossa in can. *ius naturale*, i distin. ; et notari consuevit in l. i, § *ius naturale*, ff. De iustit. et iure. Sic ergo sui defensio competit quibuscunque materialibus naturaliter, et provenit ex viribus a natura cuilibet enti insitis, ut quilibet posset sensualiter inducere, per singula naturalia discurrendo. Si autem quæramus quibus competat bellum supra definitum, tunc dico

quod solis hominibus, et non aliis, quod probat definitio belli, quam dixi, " difforme appetitui humano propositum," etc. Et hic quærendum an omnibus hominibus competat.

[Cap. lxxvii.]

*An clericis competat hoc bellum indicere ?*

Et primo quæro an clericis liceat et competat hoc bellum indicere. Quod clericis non liceat probatur per cap. *suscepimus*, De homicidio ; et per can. *seditionarios*, xlvi dist. ; probat textus xxiii, q. viii, cap. i et cap. *cum a Iudæis*, cum capitibus sequentibus, usque ad cap. *his*. Ita respondetur. Probatur per cap. *convenior*, eadem causa et quæstione. Quod liceat, probatur per cap. *olim*, De restitution. spol. ; et cap. *si vero*, et cap. *ex tenore*, De sent. excom. ; i dist., *ius naturale* ; ff. De iustit. et iure, l. *ut vim* ; ff. De vi, l. iii, § *si quis*. Clarius textus in Clem., *si furiosus*, De homicidio. Super hoc fuerunt opiniones quas recitat glossa, xxiii, q. i, in summa, et eadem causa ; et q. viii, in summa ; nam aliqui dixerunt quod nulli, etiam laico, licet vim vi repellere reperiendo, sed bene impediendo. Hanc opinionem reprobatur Clemens, *si furiosus*, De homicidio. Alii, quod laicis licet reperiendo, clericis non, et hæc eodem morbo laborat. Alii dicunt quod, si vis inferatur personæ, licitum sit vim repellere, etiam reperiendo, et clericis. Hoc probatur Clem., *si furiosus*, si adsint illa de quibus in dicto Clemente. Si autem rebus inferatur, tunc secus. An autem hoc secundum sit verum, infra subicietur. Hugo noluit dicere quod in nulla necessitate positus, etiam si aliter evadere non possit, non debet alium occidere, immo potius debet se permittere occidi. Ita notavit in can. *de his*, l distinctionis. Glossa ibi notat contrarium ; et in cap. *sicut dignum*, De homicidio. In hoc non insisto, quoniam, ut dixi, est textus in Clem., *si furiosus*, De homicidio, et si non foret textus super hoc expresse disponens, pro vel contra, hoc esset tenendum per rationes quas induxi ad probandum, hoc non esse inhibitum lege divina.

[Cap. lxxviii.] *An, etsi clerico liceat se defendere etiam occidendo, hoc sibi liceat in ecclesia ?*

Secundo quæro, an, si liceat clerico se sic defendere, etiam reperiendo et occidendo, an hoc sibi liceat in ecclesia ? Et videtur quod non, nam licet lex permittat generaliter certos actus, inhibentur tamen ratione loci, unde generalis permissio restringitur per specialem provisionem, ut l. *sanctio legum*, ff. De pœnis ; l. *alimenta*, § *basilicæ*, ff. De alim. leg. ; l. *uxorem*, § *felicissimo*, ff. De legat., iii ; et cap. *pastoralis*, De rescriptis. Sufficit regula *generi*, Lib. VI. Quod autem multi actus lege permittantur generaliter, qui tamen specialiter interdiciuntur, probatur textus in cap. *deceat*, De immun. eccles., Lib. VI ; et cap. *vendentes*, i, q. [i] iii. Ergo sic in proposito, et multo fortius, cum per hunc actum possit pervenire ad pollutionem ecclesiæ, ut cap. *proposuisti*, De consecr. eccles. vel altaris ; et cap. *unico*, eod. tit., Lib. VI. Præterea rixæ et contumelias sunt generaliter interdictæ in ecclesiis, ut cap. *deceat*, statim allegato.



Ergo et hic actus, cum sit species rixæ. In contrarium iura hoc permittentia generaliter loquuntur, ergo sic sunt intelligenda, ut l. i, § *generaliter*, ff. De lega. præstandis. Hanc partem credo veram, cum iste actus insurgat ex iure naturali, nec reprobet lex divina, et ratio iuris hoc inducentis subsit generaliter, non habita distinctione locorum. Nam hoc induxit ius naturale, ut seipsum conservet quantum durant vires principiorum naturalium, et hæc ratio subest in ecclesia sicut alibi. Ad inducta in contrarium facile est respondere, nam illi actus inhibiti in ecclesia vel sunt de natura sui de genere malorum, vel sunt de genere permissorum, ut contractus. Tamen ipsorum exclusio, ne fiant in ecclesia, propter moram grande non inducit periculum, cum extra ecclesiam æque fieri possint ad libitum contrahentium, cum sint a principio voluntatis, ut l. *sicut*, C. De act. et obligationibus. At in proposito, si non liceret in ecclesia vim vi repellere, ecce promptum periculum, quia statim faciliter occidetur. Ad aliud, cum dicitur, sequi posset pollutio. Solutio. Fortius est consideranda hominis conservatio, cum sit irrestaurabilis, quam ecclesia, quæ reconciliari potest. Et forte dici posset quod ad hoc, ut polluat, requiritur effusio sanguinis iniuriosi, ut nota in cap. unic., De consecra. eccle. vel altaris, Lib. VI.

*An liceat clerico celebranti invaso se defendere, et occidere, et sic continuato officio celebrare ?*

[Cap. lxxxiv.]

Tertio quæro, quid de clerico celebrante, an ei sit licitum dimisso officio, si invadatur, se defendere, et occidere, et numquid, si sic se defendendo occideret, licitum sit, continuato officio, celebrare ? Pro primo apparet quod non debeat divertere ab officio, immo ipsum teneatur exsequi donec possit, videntur textus vii, q. i, *illud*, et cap. *nihil*. Præterea temporalia sunt postponenda spiritualibus, xii, q. i, *præcipimus* ; De pœnis et rem., *cum infirmitas* ; C. De episcop. et cler., l. *sancimus*. In contrarium probant textus, nam propter impedimentum corporale superveniens, officium inchoatum dimittitur inexpectum, et propterea provident iura ne solus sit sacerdos in ecclesia ubi subest facultas bonorum temporalium. Probant textus in capitulis statim allegatis ; vii, q. i, *illud*, et cap. *nihil*. Vt unus suppleat continuando, ubi alter dimisit, De consecratione, dist. ii, cap. ult. ; nisi oratio missæ sit cœpta et non completa, quia tunc alter reincipere tenetur, cum illa non recipiat divisionem, ut in baptismo et ordine, ut xxiii dist., *quorundam*, et ibi nota glossam, et in cap. *nihil*, etiam notanda glossa. Sed si aliquis invadat celebrantem, ut ipsum occidat, hic evenit impedimentum celebranti immo periculum mortis, ut claret, ergo licitum prætermittere, et, per consequens, se de periculo sibi occurrenti, si potest, expedire, etiam occidendo. Ad allegata in contrarium facile est respondere, nam licet spiritualia sint præponenda temporalibus in genere, tamen celebratio spiritualium hoc casu non est præponenda, cum hoc casu, propter damnum irreparabile, lex hoc permittat quod non contingit in spirituali proposito, quia per alium restaurari potest, vel eundem, periculo excluso. De

secundo, sine argumentis dico, quodsi etiam occiderit, se defendendo, quod poterit reassumpto officio celebrare, dummodo affuerint illa de quibus loquitur Clem., *si furiosus*. Nam nullum peccatum, cum hoc fecerit legis auctoritate, cuius auctoritate nemo peccat, ut in cap. *qui peccat*, xxiii, q. iv; unde nullam irregularitatem incidit, ut in prædicta Clem., *si furiosus*. Ergo nullum videtur subesse impedimentum quin possit celebrare, ut probat Clemen., statim inducta.

[Cap. lxxxv.] *An baptizanti, ordinanti, confirmanti, inungenti, et singula sacramenta conferenti, invasis, licitum sit collationem illorum sacramentorum postponere inchoatam?*

Quarto, sic posset quæri, argui, et solvi, de baptizante, ordinante, inungente, etiam in singulis sacramentis, an sit licitum illorum collationem postponere, etiam si inchoaverit propter tutelam sui? Et in omnibus dic ut supra.

[Cap. lxxxvi.] *An præligenda sit mors<sup>(\*)</sup> invasi sacerdotis, cum puerum in mortis articulo baptizat, an vita æterna ipsius pueri, ne decedat sine baptismo?*

Quinto quæro, sacerdos baptizat puerum, qui est in mortis periculo, et incidit invasio sacerdotis, ut occidatur, quid præligendum de iure, an perficere collationem sacramenti, ne decedat puer sine baptismo, et ipse sacerdos occidatur, vel econtra, præligendum mortem propriam evadere, et permittere puerum mori sine baptismo? Sic forma quæstionem de sacerdote differente corpus Christi infirmo in extremis laboranti.

Pro primo apparet quod sacerdos potius debeat se permittere occidi quam puerum sine baptismo mori. Nam si puer moritur sine baptismo moritur æternaliter, ut probat Augustinus ad Petrum Diaconum, De consecrat., dist. iv, *firmissime*, et cap. *regenerante*, eadem dist., et cap. *nulla*, eadem dist. Probat Apostolus ad Ephesios iv cap., propter delictum unius omnes in damnatione. Sic originale peccatum, cuius effectus non est extinctus per sacramentum baptismatis, inducit damnationem æternam, sed sacerdos solum temporaliter moritur, si alias necessariis ad salutem æternam imbutus, sed mors temporalis postponenda est spirituali. Sic arguit Augustinus, xxiii, q. iv, *displicet*, et cap. *ipsa pietas*; ergo potius debet sacerdos eligere mori, ut puer in æternum non pereat. Præterea inter duo mala minus malum est eligendum, xiii dist., *nervi testicularum*, cum similibus; at minus malum est mors temporalis quam æterna, ut cap. *ipsa pietas*, et cap. *displicet*, xxiii, q. iv. Et mors pueri est æterna, ut cap. *firmissime*, et cap. *nulla*, et cap. *regenerante*, De consecr., dist. iv. Mors autem sacerdotis est temporalis, ergo præligenda. Præterea præcipuus actus caritatis est quod quis proximum diligat sicut seipsum, De Pœnit., dist. ii, *proximos*, et [cap.] § *proinde*, et cap. *caritas est, ut mihi videtur*. At hic sacerdos, si præligat salutem æternam puero vitæ suæ tempo-



rali, non diligit ipsum sicut seipsum, et sic caritate carebit, quod probatur. Nam vita æterna sine comparatione præcellit vitam temporalem. Ergo præeligendo vitam temporalem sibi vitæ æternæ proximi multo magis se diligit quam proximum, et sic remanet caritate vacuus. Præterea illud præeligendum est ad cuius productionem pauciora mala sequuntur, sed ad mortem sacerdotis minus malum sequitur quam ad mortem pueri sine baptismo, ergo præeligenda mors sacerdotis. Probatur maior. Nam hæc est regula in moribus, quod plura mala, ceteris paribus, deteriora sunt paucioribus, et magis fugienda. Probatur in can. *nervi*, xiii distinctionis. Probatur minor, nam si eligatur sacerdotis vita, sequuntur duo mala, scilicet, mors æterna pueri, ut supra deductum est, et neglectus curæ animarum, quod mortale, ut in can. *cum sit ars*, De æta. et qualitate. Si autem præeligatur mors temporalis sacerdotis, non sequitur nisi illud malum, scilicet, temporalis mors, quod, etiam attentata qualitate actus in se, sine comparatione minus malum est morte perpetua, ergo inferendum ut supra.

In contrarium videntur textus qui loquuntur generaliter, concedendo cui libet facultatem se defendendi in casu necessitatis. Sufficit Clem., *si furiosus*, sæpius allegata. Confirmatur per iura quæ dicunt caritatem incipere a seipso, ut l. *præses*, C. De servit. et aqua ; et cap. *petitio*, De iureiurando.

Solutio. Pro evidentia huius quæstionis et solutionis eiusdem est examinare casus indubitatos. Nam sunt casus indubitati in themate proposito. Ecce si ponamus quod puer per alium, etiam laicum vel mulierem, baptizari posset, esto quod sacerdos diverteret a sacramenti collatione, non esset dubium quod sacerdos deberet præeligere salutem suam, ubi enim verisimiliter puer posset vivere usque ad expeditionem periculi, et hoc verisimiliter constaret, non haberem quæstionem dubiam, quominus sacerdos haberet præeligere salutem suam, nec rationes inductæ concludunt contra hunc casum. Si poneremus quæstionem in adulto, non autem in infante, qui adultus, licet non suscipiat baptismum fluminis, tamen decedet, si veram habeat fidem cum baptismo fluminis. Adhuc non haberem quæstionem dubiam, immo dicerem, ut supra, præeligendam salutem sacerdotis. Sed quæstio procedit in puero, de quo constat quod morietur sine baptismo, si sacerdos divertat. Vel quæstio procederet in dubio, ubi, videlicet, de hoc probabiliter dubitaretur.

In primo casu, videlicet, ubi de hoc constaret, crederem præeligendam mortem sacerdotis temporalem, per iura supra inducta, et fundor per ea quæ habentur, vii, q. i, § *hoc etiam*, vers. *cum vero specialiter*. A contrario, et quod ibi notat glossa. Nam ubi solus prælatus quæritur, nec ecclesia potest esse tuta, eo fugiente, exponere debet se morti pro ipsa, ut ibi. Hæc maxime procedunt in proprio sacerdote et parochiano, et movent me rationes supra ad hoc inductæ.

Vbi autem foret dubium probabile de morte vel de vita pueri, usque ad expeditionem periculi, et constaret de morte presbyteri, nisi diverteret, adhuc crederem præeligendam mortem sacerdotis, cum in incertis non certus locus sit coniecturis, ut l. *continuus*, § *illud*, ff. De verbor. obligationibus. Vbi

autem probabile dubium foret hinc inde, crederem, ut supra primo membro hoc, in sacramento baptismatis.

In corpore autem Christi, si vera esset glossa quæ est in cap. *quod in te*, De pœnis et remiss., quæ dicit viaticum non esse sacramentum necessitatis, tunc quæstio non esset multum dubia. Sed illa glossa non est vera, immo alia glossa notat contrarium in cap. *veniens*, De transaction., in primâ glossa, et illa est vera, ut notat De sacrament. non iterand., super rubrica. Probare videtur textus in cap. *omnis*, De pœn. et remissionibus. Tamen adhuc, hoc supposito pro vero, quod sit sacramentum necessitatis, adhuc dicerem præeligendam vitam temporalem sacerdotis. Moveor ex hoc, quia etiam si quis decedat sine corpore Christi, ubi per eum non stetit, et non contempsit, non moritur æternaliter, sicut in baptismo. Idcirco in hoc casu non concluderent rationes supra inductæ. Idem dicerem in sacramento pœnitentiæ, quia etiam sine oris confessione decedens, ubi per eum non stetit, sola contritionis virtus salvat eum, ut notat De pœnit., dist. i<sup>o</sup>, in summa, et in § *his ita*. Idem per omnia dicerem in sacramento unctionis.

[Cap. lxxxvii.]

*An monacho liceat se defendere sine licentia abbatis sui?*

Sexto quæro, numquid monacho liceat se sic defendere sine licentia prælati sui? Videtur quod non. Nam monachus non vibrat, nec vibrare debet actum volitivum, nisi de licentia prælati sui, quia sine ipsius licentia caret velle et nolle, xii, q. i, *nolo*, et cap. *non dicatis*; De electione, *quorundam*, et cap. *si religiosus*, Lib. VI; et Clem., *religiosus*, De procuratoribus. At iste actus defensæ provenit a mero libertatis arbitrio, quia potest etiam nolle, ergo non poterit sine licentia prælati. Præterea monachus est mortuus mundo, xvi, q. i, *Monachi*, et cap. *placuit*; ergo sibi non competunt actus tendentes ad defensionem vitæ. Præterea monacho interdicti sunt actus etiam in bonum tendentes sine licentia prælati sui, ut sunt vovere, peregrinari, et similes actus, per iura statim allegata. In contrarium videtur, nam defensio corporis sui provenit ex instinctu naturali, nec reprobatur lege divina nec altera, ergo licet monacho, cum quantum ad naturales actus non sit mortuus, sed solum quoad civiles actus, ut iuribus supra inductis.

Solutio. Credo quod, si monachus sine periculo moræ possit se defendere cum licentia prælati sui, ipsam petere debet. Hoc probant iura inducta ad primam partem. Si autem non possit licentiam prælati petere, quia non est præsens, et periculum est in mora, tunc poterit sine licentia prælati. Moveor ex hoc, quia iste actus est iure naturali inductus, quem prælatus non posset sine causa totaliter interdiceret, immo forte nec Papa, cum natura hoc induxerit, nec in his subditus tenetur prælato suo, sicut si totaliter, et sine causa, interdiceret cibum et potum. Movet me glossa quæ est in cap. *non dicatis*, xii, q. i. Nam quærit ibi glossa an liceat monacho facere eleemosynam pauperi, fame morienti nisi subveniatur ei, sine licentia prælati, et tenet quod sic. Nam hoc



casu necessitatis tenetur, si providere potest alterius vitæ per actum alias inhibitu sibi, quanto magis providere poterit vitæ suæ per actum sibi a naturalibus insitum. Non video quare, immo dicit Raymundus in summa De negot. sæcularibus, § *sed quæritur circa hoc*, quod, si abbas inhiheret, ipse facere debet, quia tunc non obediēt homini sed Deo, viii dist., *quo iure*.

*An servo liceat se defendere sine iussu domini sui ?*

[Cap. lxxxvii  
bis.]

Septimo quæritur, numquid liceat servo sic se defendere sine iussu domini sui ? Videtur quod non. Nam actus servorum pro nullis habentur, ut l. [servus] *servum*, C. De rei vind.; et l. *vix certis*, ff. De iudic.; et l. *si quis mihi bona*, § *iussum*, ff. De acquir. hæreditate. In contrarium videtur, nam hodie mors servorum non est in potestate dominorum, ut l. i, ff. De his qui sunt sui vel ali. iuris. Confirmatur. Nam actus naturales non potest totaliter dominus interdiciere servo, per quorum interdictionem servus pereat; ut l. supra prox. allegata. Solutio. Vt supra proximo dictum est de monacho.

*An bannitis, qui per statuta civitatum quandoque impune occidi possunt, liceat se defendere ?*

[Cap. lxxxviii.]

Octavo quæritur, numquid illis quos licitum est occidere impune, utpote bannitis, de quibus aliquando disponunt leges municipales, quod impune offendi possint, licitum sit se defendere ? Videtur quod non. Nam, si a privato iuste inferatur violentia, non licet se defendere, ut l. iv, ff. Ad legem Aquiliam. At hic iuste inferitur, quia lege auctorizante, ut l. *iuste*, ff. De acquir. possessione. Confirmatur. Si violentia inferatur a publica persona, non licet se defendere, ff. De iniur., l. *iniuriarum*, § i; ff. De rei vindic., l. *qui restituere*. At hic iste gerit vicem publicæ personæ, nam lex facit ipsum ministrum, permittendo privato ipsum punire, et hoc potest lex, scilicet, dare iurisdictionem privato, ut l. *et quia*, ff. De iurisd. omn. iudic.; et cap. primo, Ne prælati vices suas, ubi notatur. Ergo inferitur huic non licere se defendere.

In contrarium videtur, quia hic est privatus, immo etsi foret publica persona, apparet iniuste inferri violentiam cum inferatur iuris ordine non servato, et sic iniustitia ordine attentio, ut l. *prolatam*, C. De sent.; et cap. *quoniam contra*, De probationibus.

Secundo, puto ponderanda verba legis, nam aliquando lex permittit aliquid, quia nullo iure prohibetur, ut xxxi, q. i, *hac ratione*. Aliquando lex permittit aliquid contra constitutiones humanas, ut contrahere olim in quinto gradu, ut xxxv, q. iii, *quædam*. Tertio modo lex permittit tolerando, non quia faciat actum alias illicitum licitum, sed actum illicitum, manentem illicitum, non punit, ut dicit textus in can. *denique*, iv distinctione. Nam comedentes carnes in media nocte Dominicæ carniprivii non puniuntur, et dicit

textus permitti, id est, non puniri propter multitudinem et scandalum, sic alias permittitur adulterium, ut vitetur homicidium, xxxiii, q. [i] ii, *si quod verius*; et tamen adulterium non fit licitum per legem sic permittentem, sed, actu manente illicito, pœna remittitur. Sic in proposito, si lex permittat tolerando, et pœnam remittendo, actu manente illicito, propter odium banniti, tunc crederem bannito licere se defendere, nec hunc articulum concludunt supra allegata. Si autem lex permetteret positive faciendo actum de illicito licitum, tunc secus. Et isti modi permissionis notantur per glossam, iii dist., *omnis autem lex*.

[Cap. lxxxix.]

*Contra quos liceat hoc particulare bellum indicere?*

Circa quintum, videlicet, contra quos hoc particulare bellum competat, est videndum. Et circa hoc quæritur de pluribus.

*An liceat contra superiorem suum?*

Et primo quæritur, an licitum sit alicui hoc bellum indicere contra superiorem suum? Et glossa in l. *ut vim*, ff. De iustit. et iure, dicit quod non; per l. *qui restituere*, ff. De rei vindic.; et l. *iniuriarum*, § i, ff. De iniuriis. Probat textus in cap. *qui resistit*, xi, q. iii. Ego non credo quod glossa dicat simpliciter verum, sed credo distinguendum. Aut constat quod iniuste agit, aut constat quod iuste, aut dubitatur. Primo casu, credo resistendum, ut l. *prohibitum*, C. De iure fisci; et l. *devotum*, C. De metatis. Et hoc maxime cum aliquid extra officium suum agit, ad ipsum non exspectans. Secundo casu non est resistendum, ut l. *qui restituere*, ff. De rei vindic.; et l. *qui iniuriarum*, § i, ff. De iniuriis. Tertio casu non est resistendum nisi tale sit factum quod non possit post tempus restaurari. Nam talia facta pro infectis haberi non possunt, ut l. *in bello*, § *facti*, ff. De captivis. Nam in talibus lex inhibens appellari ante definitivam permittit appellari, ut notatur in l. *ante sententiæ tempus*, C. Quor. app. non recipiuntur.

[Cap. xc.]

*An liceat contra iudicem, etiam si iniuste aliquid agat?*

Secundo quærit glossa in dicta lege, *ut vim*, quid si iudex, aut potestas, aliquid iniuste agat? Respondet Martinus quod non est resistendum, per legem *iniuriarum*, § i, ff. De iniuriis; sed conveniet magistratum durante officio, si est de minoribus, vel finito officio, si est de maioribus, ut ff. De iudic., l. *pars literarum*; et l. iii, ff. Quod met. causa. Hanc glossam non credo veram in facto irreparabili. Pone quod iudex invadat me, ut occidat, et est de maioribus magistratibus, numquid exspectandum sit donec finiatur officium? vel, si est de minoribus, debetne exspectari donec porrigatur querela coram præside? Absit, quia talia facta, ut supra dixi, sunt irretractabilia, ut prædicta l. *in bello*, § *facti*, ff. De captivis.



*An liceat filio contra patrem ?*

[Cap. xci.]

Tertio quæritur, numquid licitum sit filio contra patrem. Videtur quod non, propter ius patriæ potestatis, ut C. De pat. potest., per totum. Confirmatur. Nam non licet filio contra se, ergo nec contra patrem, cum censeantur una persona, ut C. De impub. et aliis substit., l. ult.; Instit., De inutil. stip., § *ei qui*; C. De agric. et censi., l. *cum scimus*; in Authent., De iureiurando a moriente præstando, § i. In contrarium videtur. Nam hæc defensio provenit a iure naturali, ut probatum est supra, in tertio membro principali, nec aliqua lege reprobatur, immo qualibet approbatur, ut ibi deductum fuit. Ergo patria potestas, iure civili inducta, illud ius filio competens non tollit, cum iura naturalia civilibus non tollantur. Instit., De iure nat. gent. et civili, § *naturalia*; v dist., *ius naturale*.

Solutio. Dico quod, si pater aliquid agat contra filium, corrigendo in his quæ permittuntur ex iure patriæ potestatis, non excedendo, quod non liceat filio se defendere, quia in hoc ius civile quod induxit patriam potestatem limitat ius naturale, quod fieri potest, ut supra deductum est. Si autem pater aliquid agat contra filium, excedendo sibi concessa ex iure patriæ potestatis, tunc crederem licitum sibi defendere. Et hæc procedunt in filio degente in potestate patris, in emancipato enim minor est quæstio. Ad inducta in contrarium patet solutio per iam dicta.

*An liceat monacho contra abbatem suum ?*

[Cap. xcii.]

Quarto quæritur, numquid monacho hoc liceat contra abbatem ? Videtur quod non, nam monachus caret vibramine voluntatis sine licentia abbatis sui, xii, q. i, *nolo*, et cap. *non dicatis*; De statu monach., *cum ad monasterium*. Sed iste actus provenit ex imperio voluntatis, cum possit nolle, nec his intervenit licentia prælati, immo tacita et ficta contradictio, quæ plus operatur quam verbalis, ff. De ædilit. edict., l. *si tamen*, § *ei quod*; ff. De legi., l. *de quibus*, in fine; De appellationibus, *ad audientiam*, et cap. *ut nostrum*, et cap. *dilecti*. Confirmatur. Nam monachus mortuus est mundo, xvi, q. i, *monachi*, et cap. *placuit*; et Authent., *ingressi*, C. De sacrosanctis ecclesiis. Ergo sibi non competit actus defensionis vitæ mundanæ.

In contrarium apparet. Nam iste actus provenit ex iure naturali, nulla lege positiva reprobato, licet modificato. Ergo non denegatur monacho, qui, licet sit mortuus civiliter, non tamen naturaliter, ut iuribus supra allegatis. Solutio. Si prælatus contra monachum aliquid attentet de his quæ permittuntur a iure communi, in corrigendo et similibus, vel ex constitutionibus ordinis, tunc monacho non licet resistere, immo nec hoc casu audiretur appellans, ut De appell., *cum speciali*, et cap. *de priore*. Si autem prælatus aliquid attentet contra monachum in his quæ non pertinent ad officium suum, iure vel constitutionibus modificatum, tunc licet se defendere, maxime in his quæ propter moram periculum ingerunt, utpote si abbas monachum invaderet, ut

ipsum subito occideret, quid miri cum etiam monacho liceat abbatem impetere, accusando, si aliquid contra debitum agat, ut cap. *ex parte*, De accusat., et cap. *cum olim*, eod. titulo.

[Cap. xciii.]

*An liceat servo contra dominum ?*

Quinto quæritur, numquid hoc liceat servo contra dominum. Apparet quod non, cum omnimodo potestas sit domini contra servum, ut l. i, ff. De his qui sunt sui vel alieni iuris. Confirmatur. Nam servus tenetur dominum præliantem iuvare, alias punitur, ut l. *si quis in gravi*, ff. De S. C. Silaniano. Ergo ipsum impugnare non poterit, ut cap. uno, De nat. ex lib. ; et cap. *conquerente*, De restit. spol. ; ff. Si servit. vind., l. *altius* ; ff. De condic. indebit., l. *frater a fratre* ; xxvi dist., *una tantum* ; xxv dist., can. ult. ; xvi, q. i, *Silvester* ; ff. De fideiuss., l. *tutor* ; ff. De admin. tut., l. *quotiens*.

In contrarium apparet. Nam hodie restricta est potestas dominorum in servos, ut l. i, ff. De his qui sunt sui vel alieni iuris. Nam hodie non habent potestatem trucidandi, nec acriter eos affligendi. Ergo. Solutio. Vt dictum est de monacho, si dominus aliquid attentet contra servum in his quæ iura permittunt, non licet servo se defendere. Nam in hoc limitatur actus a iure naturali proveniens a iure positivo, limitante potestatem dominorum in servos. Si autem attentet aliquid ultra quam a iure permissum est, tunc secus, quia in his, licet servi non sint agniti quoad actus civiles, tamen quoad actus naturales sic, qualis est iste.

Per hoc solvuntur consimiles quæstiones. Numquid vassallo contra dominum ? Numquid discipulo contra magistrum ? Numquid militi contra præpositum ? Numquid uxori contra maritum ? Vniuniformi solutione solvuntur, ut, si attentetur quod ius permittit, non licet se defendere. Si autem ultra, et contra iuris debitum, tunc secus, ut supra plene tactum est. Ex his breviter infertur contra quos, ex regula supra dicta, possent quæstiones infinitæ solvi.

[Cap. xciv.]

*Pro quibus personis liceat hoc particulare bellum indicere ?*

Circa sextum est videre, videlicet, pro quibus liceat ? et primo circa personas pro quibus licitum sit. Et pono indubitatum quod pro defensione sui ipsius. Hoc probat textus in l. *ut vim*, ff. De iustit. et iure ; et l. i, § *vim vi*, ff. De vi et vi armata ; et l. iv, Ad leg. Aquil. ; et l. *scientiam*, § *qui cum aliter*, eod. tit. ; clare in Clemen., i, De homicidio. De aliis vero infra quæritur.

[Cap. xcv.]

*An liceat patri pro filio ?*

Et primo quæro, an liceat patri pro filio ? Expediendū parum dubia sine argumentationibus, dicendum quod sic. Nam pater filium ut seipsum diligit, ut l. *isti quidem*, ff. Quod met. causa. Nam propter hoc perpetua-



tur in ævo, ff. De verb. sig., l. *liberorum*, in fine ; etiam quia una persona censetur, ut C. De impub. et aliis substit., l. ult. ; in Authent., De iureiur. a moriente præstito, in principio ; Instit., De inutil. stip., § *ei quem*. Hoc clarum. Idem econtra, scilicet, filius pro patre.

*An liceat marito pro uxore ?*

[Cap. xcvi.]

Secundo quæritur, numquid hoc liceat marito pro uxore ? Clarum est quod sic, nam iniuria uxori irrogata est irrogata marito, et iniuriarum actio sibi competit, immo et sponso, ut l. *item apud*, § [*si sponsum*] *sponsum*, ff. De iniuriis. Et marito licitum est occidere vilem repertum adulterantem cum uxore, ut l. *marito*, et l. *capite quinto*, ff. De adulteriis ; et l. *Gracchus*, C. eod. tit. ; immo et fabulantem monitum, per iura Authenticorum, nec incidit in capitulum *si quis suadente*, xvii, q. iv. Ob hoc iniciens manus violentas in clericum, ut cap. *si vero*, § *nec ille*, De sent. excommunicationis.

*An liceat pro fratre, sorore, et aliis coniunctis personis ?*

[Cap. xcvi.]

Tertio quæritur, quid pro fratre et sorore et aliis coniunctis personis, et non coniunctis ? Et glossa in l. *ut vim*, ff. De iustit. et iure, dicit ponderandam affectionem. Allegat l. *isti quidem*, ff. Quod met. causa ; et l. *cum servus*, ff. Mandati. Alii volunt dicere quod pro omnibus coniunctis licet. Probant sic, nam si quis iniuriatur uni coniuncto, omnibus iniuriari videtur, licet non competat aliis iniuriarum actio, ut l. *lex Cornelia*, in prin., ff. De iniuriis. Confirmant, nam pro defensione rerum licet vim vi repellere, ut l. i, C. Vnde vi ; et l. iii, § *eum igitur*, ff. De vi et vi armata. Et licitum est volenti vim vi repellere, pro defensione rerum, amicos et coniunctos convocare. Ergo licitum est amicos et coniunctos iuvare. Et sic concludunt pro coniuncto indistincte hoc licere. Hæc opinio confirmari videtur. Nam homo homini officium debet, ut l. *cum servus*, ff. De servis exportandis. Ergo ex illo officio iuvare licet. Confirmatur per l. *addictos*, C. De appell. ; melius, per l. *non tantum*, ff. De appell. ; ubi etiam extraneus pro condemnato in criminali appellat, etiam ipso nolente. Probatur per l. iii, C. De liberali causa. Dominus Iacobus Buttrigarius in l. *ut vim*, distinguit in hunc modum. Aut ego, ut ego, sine mandato iniuriati, volo defendere iniuriatum, et possum per viam iuris, non autem facti. Et sic intelliguntur ll. statim allegatæ, *addictos, non tantum* ; et l. iii, C. De lib. causa. Aut volo hoc facere, non ut ego, sed mandante iniuriato, et tunc potero etiam per viam facti, ut l. iii, § *eum igitur*, ff. De vi et vi arm. Alii distinguunt. Aut illi erant in comitiva iniuriam passi, et possent tunc propulsare iniuriam personæ eius illatam. Argumentum, l. *item apud*, § *si quis* [*virginem*] *virgines*, ff. De iniuriis. Alias non, ut tenet glossa indistincte in l. i, Vnde vi, ubi Cinus hanc opinionem recitat in antepænultima quæstione. Alii, ut Iacobus de Ravennate, dicunt indistincte quod

licet. Ratio. Nam negotia mea possunt iuari per alium, ut l. i, ff. De negot. gestis. Multo fortius et persona iuari poterit, cum persona rebus præferatur, ut l. *sancimus*, C. De sacrosanctis ecclesiis. Allegat pro casu, l. *Gracchus*, C. De adulterio; et, si dicas, ibi fuit filius, solvit per l. *liber homo*, ff. Ad leg. Aquiliam. Non obstat l. *cum fundum*, ff. De vi et vi armata. Nam ibi ex intervallo voluit, quod etiam non licuisset per se. Non obstat, secundum eum, l. *ut vim*, ff. De iustit. et iure; ubi dicit "ob tutelam sui corporis." Respondet per l. *si servus*, ff. De servis exportandis. Hanc opinionem videtur sequi Cinus in l. i, C. Vnde vi, in quæstione antepænultima.

In his tot et tantorum, crederem ponderandum, quia mixtim formavi quæstionem de coniunctis et extraneis, quod quæri potest, an liceat coniuncto vel extraneo alterius violentiam vi repellere, sicut liceret propriam, ad evitandam pœnam irregularitatis, si sit clericus vel laicus, hoc casu occidens vel mutilans. Potest etiam quæri de utrisque, an licitum sit, ut non incidant aliam pœnam legis vel canonis. Si quærat de primo, dico casum esse in Clement., si *furiosus*, De homicidio, quod solum evitat pœnam irregularitatis, si hoc faciat seipsum tantummodo defendendo, non autem alium, etiam patrem vel filium. Hoc probat textus, dicens, "Idem censem de illo qui, mortem aliter vitare non valens, suum occidit vel mutilavit invasorem." Loquitur ergo de suo, non autem de invasore alterius. Hoc ibi etiam notat glossa super verbo "suum." Hoc ergo casu reputo planum, ut ibi. Si autem quæramus an liceat, ut vitentur aliæ pœnæ legales vel canonicæ, et tunc distingue. Aut loquimur de pœna excommunicationis, si hoc casu percutiat clericum, violentiam alterius repellendo vi, et tunc dico cum Innocentio quod, si defendat patrem, matrem, uxorem, filium, vel filiam, evadit sententiam excommunicationis. Allegat ipse l. *isti quidem*, ff. Quod met. causa; et l. i, § *si vir*, ff. De S. C. Silaniano. Et est ratio differentię inter hunc casum et præcedentem, nam irregularitas contrahitur etiam sine dolo, ut est videre in iudice iuste occidi mandante, li dist., *qui in aliquo*. Sed, in excommunicatione per illum canonem lata, requiritur diabolica instigatio, ut cap. *si quis suadente*, xvii, q. iv. In extraneis autem non evadit pœnam illius canonis, etiam si milies mandato iniuriati hoc fecisset. Aut loquimur de alia pœna personali vel pecuniaria, et tunc distingo, aut volentes vim repellere a violentiam passo, aut sunt coniuncti aut extranei. In coniunctis, dic, ut glossa in l. *ut vim*, ff. De iustit. et iure; eam limitando per l. *in privatis*, ff. De iudic.; et l. *lex Cornelia*, in princip., ff. De iniuriis. Aut loquimur de extraneis, et tunc aut illi extranei erant deputati pro comitiva violentiam passi, et tunc licet, ut l. *item apud Labeonem*, § *si quis [virginem] virgines*, ff. De iniuriis; aut non erant deputati pro comitiva, et tunc aut volunt ex intervallo repellere, et non possunt, ut l. *cum fundum*, ff. De vi et vi arm.; quia nec ipse propriam sic repellere posset. Et hoc de defensa facti. Defensam autem iuris facere possent etiam ex intervallo, ubi iura hoc permittunt, ut l. *non tantum*, ff. De appell.; et l. iii, De liber. causa; et l. *addictos*, C. De appellationibus. Et per hoc non puto veram opinionem Domini Iacobi Buttrigarii, qui dicit quod indistincte defensam iuris facere possunt. Nam hoc



indistincte non est verum. Nam sunt casus in quibus tertio non licet actionem seu accusationem proponere pro iniuriâ passo. Tollo exemplum regulare in privatis delictis. Sic ergo solum ubi iura permittunt. Si autem volunt incontinenti repellere, tunc distinguerem cum Domino Iacobo. Aut advocantur per violentiam passum, et tunc licet. Nam licet violentiam passo advocare amicos pro defensione rerum, ut l. iii, § *eum igitur*, ff. De vi et vi armata ; ergo pro defensione personæ, quæ præponderat, ut l. *sancimus*, C. De sacrosanct. ecclesiis. Aut non advocantur, et tunc licet. Textus est in cap. *dilecto*, De sent. excom., Lib. VI. Pro hoc faciat xxiii, q. iii, *non inferenda*, et cap. *fortitudo* ; De sent. excom., *quantæ*. Faciant notata in l. ii, C. De commerc. et mercatoribus. Et sic in hoc credo veram opinionem Iacobi de Ravennate. Textus est in prædicto cap. *dilecto*. Nam dicit ibi textus, “ et cum liceat cuilibet suo vicino vel proximo, pro repellenda ipsius iniuriâ, suum impartiri auxilium.”

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*An quis teneatur quem defendere ne occidatur ?*

[Cap. xcvi.]

Quarto quæritur, quis videt quendam occidi nisi iuvet ipsum, an teneatur ipsum iuvare ? Videtur quod sic, per l. *necare*, ff. De agnoscendis liberis. Confirmatur hoc ex officio quod debet homo homini, ut l. *servus*, ff. De servis exportandis. Hoc confirmatur. Nam error cui non resistitur approbari videtur, lxxxiii dist., *error*, et can. *consentire*, et can. *quid enim*. Nam licitum est alicui pretium recipere, ut metum illatum alteri excutiat, ut ff. Quod met. causa, l. *metum*, § *sed licet*. Confirmatur. Nam in quibusdam casibus hoc est speciale, quod quis teneatur alium sic iuvare, ff. De S. C. Silaniano, l. i, § *hoc autem* ; et l. ult., C. eod. titulo. Ergo contrarium ius commune, ff. Ad municipalem, l. i ; et l. *ius singulare*, ff. De legibus. Glossa tenet quod iuvare tenetur verbo non facto, regula *culpa*, ff. De reg. iuris. Nec obstat officium quod debet homo homini, quia illud debet sine periculo sui, ut l. *habet*, ff. De oper. lib. ; et l. *Nepos Proculo*, ff. De verbor. significatione.

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*Quinto quæritur de his qui tenentur violentiam ab aliis propulsare.*

[Cap. xcix.]

Et circa hoc quæritur de pluribus.

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*An vassallus teneatur iuvare dominum suum ?*

Et primo de vassallo quæritur. Et non est dubium quia tenetur iuvare dominum, alias perdit feudum, ut in Vsibus Feudorum, Quæ fuit prima causa beneficii amittendi, cap. *prima autem causa*, § *item qui dominum*, et § sequenti.

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*An servus teneatur iuvare dominum suum ?*

[Cap. c.]

Secundo quæritur de servo, et quod teneatur iuvare dominum est textus in l. i, § *hoc autem*, ff. De S. C. Silaniano ; et l. ult., C. eod. titulo.

[Cap. cl.]

*An miles teneatur defendere præpositum belli ?*

Tertio quæritur de præposito belli, et quod teneatur iuvare præpositum belli, si potest, alias capite punitur, est textus in l. *omne delictum*, ff. De re milit. ; et l. iii, § fin., ff. eodem.

[Cap. cii.]

*An vassallus videns dominum invasum ex una parte, patrem ex alia, etc. ?*

Quarto quæritur, vassallus videt dominum invasum ex una parte, patrem ex alia, uterque pariter est in mortis periculo, nisi iuventur, nec iuvare potest nisi alterum, quem iuvabit, patrem an dominum ? Glossa quæ est xxii, q. v, *de forma*, dicit quod vassallus tenetur iuvare dominum contra filium proprium. Inducit, quia filius tenetur patri iure naturæ, sed vassallus domino vinculo iuramenti, ut in Vsibus Feudorum, Quæ fuit prima causa benefic. amittendi, cap. uno. Et secundum hoc foret decisa quæstio, quia teneretur iuvare dominum cui plus astringitur. In hac quæstione dicerem contrarium. Et moveor ex hoc, nam filius tenetur patri ex vinculo naturali, ex quo ab eo progenitus est. Tenetur et vinculo civili, quia sub eius potestate patria, domino autem tenetur vinculo civili tantum, ut prædicto cap. *de forma*, xxii, q. v. Sed duo vincula vincunt unum in Authent., De consanguin. et uterin. fratribus, in principio. Confirmatur ratione prioritatis obligationis, nam prius est vinculum paternum vinculo dominico. Ergo primo ipsum iuvare tenetur, ut l. *potior*, et l. *qui balneum*, ff. Qui potior. in pign. habeantur. Confirmatur. Iuramentum præstitum domino intelligitur salvo vinculo præcedenti, nam ius alteri quæsitum non tollitur per secundam obligationem, ut dicta l. *qui balneum*, et l. *potior*. Confirmatur per cap. *petitio*, De iureiurando. Nam iurando domino de ipsum iuvando, non intelligitur iurasse sic quominus seipsum prius iuvet quam dominum, quia hæc prima caritas, ut l. *præses*, C. De servitutibus. Sed pater est eadem persona cum filio iuris fictione, ut l. ult. cum concordantiis, C. De impub. et aliis substitutionibus. Ergo.

[Cap. ciii.]

*An clericus videns episcopum suum invasum ex una parte, patrem ex alia, uterque pariter, etc. ?*

Quinto quæritur, pone clericus videt episcopum suum invasum ex una parte, patrem ex alia, uterque pariter est in mortis periculo nisi iuventur, nec iuvare potest nisi alterum, quem iuvabit, episcopum vel patrem carnalem ? Hostiensis in cap. *gravem*, De excess. prælat., arguit ex verbo "fratri" quod ibi ponitur, quod plus astringuntur patribus spiritualibus quam carnalibus. Pro hoc facit cap. ii, De translatione. Si illa opinio esset vera, soluta foret quæstio. Sed tamen in hac quæstione credo, ut supra proxima quæstione induco, cap. fin.<sup>66</sup> De postulatione. Nam ibi dicit textus, "si postulaverit contra Ecclesiam, et non pro suis, perdit beneficium," ergo e contrario pro suis



posset. Induco, cap. *petitio*, De iureiur. ; inducendo ut supra proxima quæstione induxi, et faciant motiva supra proxima quæstione inducta, et glossa in cap. *pittacium*, xxx, q. iii, super verbo "multo magis," tenet quod in exhibitione temporalium magis tenemur patri carnali quam spirituali. In exhibitione autem reverentiæ, e contra. Idem notat glossa xxx dist., can. i. Faciant quæ notantur lxxxvi dist., *non satis* ; et can. *quiescamus*, xlii distinctione.

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*Pro quibus rebus licitum sit bellum indicere ?*

[Cap. civ.]

Quia visum est supra hoc membro, an, et pro quibus personis, liceat hoc bellum indicere, nunc autem subsequenter quæritur, an et pro rebus defendendis licitum sit etiam hoc bellum indicere ? Et circa hoc quæritur de pluribus.

*An liceat pro rebus iuste possessis ?*

Et primo de rebus iuste possessis, et de his non est dubium. Textus est in l. i, C. Vnde vi. Probatur in l. iii, § *si quis autem*, vers. *eum igitur* <sup>(7)</sup>. Alias est §, ff. De vi et vi armata ; et cap. *olim*, De restit. spoliatorum.

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*An liceat pro rebus iniuste possessis ?*

[Cap. cv.]

Secundo quæritur, an pro rebus iniuste possessis hoc liceat ? Glossa in l. i, C. Vnde vi, hoc tractat. Et videtur quod non, a contrario sensu illius textus, quod est validum argumentum, ut l. i, § *huius rei*, ff. De offic. eius cui mand. est iurisd., et cap. *cum virum*, [De convers. coniugatorum] De regularibus ; et can. *hospitiolum*, xxxii distinctione. In contrarium videtur per textum, l. i, § *qui vi a me*, ff. De vi et vi arm. ; et l. *cum fundum*, eodem tit. ; et l. *si cum exceptione*, § *Pedius*, ff. Quod met. causa. Solutio. Pro hac legum apparenti contrarietate, glossa in dicta l. i dat plures solutiones. Primo, quod ibi subaudiatur "maxime," et tunc cessat contrarium, quia etiam pro vitiosa possessione licet. Secundo, solvit quod iungatur principium legis cum fine, ut dicatur, "recte licet." Sed tunc obstat quod dicit lex in medio "sine vitio." Ergo, a contrario, secus, ubi cum vitio. Tertio, quod iuste possidenti semper licet, sed vitiose possidenti non licet semper. Nam si dominus incontinenti veniat, non licet vitioso possessori sibi resistere, ut l. iii, § *eum igitur*, ff. De vi et vi armata. Quarto, exponendo recte, id est, non vi, non clam, non precario, et hæc non placet glossa. Sed Iacobus de Ravennate sequitur eam, quantum ad eum qui vult propulsare, ut si violentia inferatur ab eo a quo vitiose possidet, licet incontinenti, non autem ex intervallo. Si autem ab alio vitiose possideat, tunc quandocunque licet. Et hoc est quod dicit lex, quod adversus extraneos vitiosa possessio prodest, ff. Vti possid., l. ii ; ff. De acquir. poss., l. ultima ; ff. Si servit. vind., l. *loci corpus*, § *com-*

*petit.* Hic videtur sentire Iacobum quod clandestinum possessorem licitum sit mihi expellere, si a me clam possideat, quia clandestina possessio est vitiosa, ut ff. De acquir. poss., l. *cum quis*. Pro hac opinione facit l. *si servus*, ff. Quod cum eo. Hanc opinionem videtur sentire glossa, ff. Vti poss., l. i, § *interdictum*, in medio magnæ glossæ ibi, "nec tamen volo," etc. Dinus ibi tenet contrarium, cum nulla lege hoc reperiatur cautum, quod clandestinum possessorem liceat mihi expellere. Præterea dicit lex, "vim vi repellere licet," sed qui clandestinam ingreditur, non infert vim, cum differant clandestina et violenta, ut l. *clam possidere*, § *qui ad nundinas*, ff. De acquir. possessione. In precario autem possessore procedere posset opinio Iacobi, post denegatam restitutionem. Nam tunc enim videtur spoliare dominum, ut notatur in l. *vitia*, C. De acquir. possessione.

In hac opinionum varietate crederem secundam solutionem glossæ fore veram, quam etiam sequitur Petrus de Bellapertica in dicta l. i, eam tamen sic ampliando, "Aut ego volens vim propulsare, iuste possideo, aut iniuste. Si iuste, aut volo incontinenti et cum moderamine inculpatæ tutelæ, et possum, ut dicta l. i; et l. i, § *vim vi*, ff. De vi et vi arm.; aut ex intervallo, et tunc non possum, ut l. iii, § *si quis autem*, vers. *eum igitur*, ff. De vi et vi armata. Secundo casu, scilicet cum iniuste possideo, aut possideo iniuste a te, contra quem volo vim propulsare, aut ab alio. Si a te, tunc aut vi, aut clam, aut precario. Si vi, tunc aut statim venis, ut recuperes, et non licet mihi resistere, et sic intelligitur, l. i, a contrario sensu, C. Vnde vi." Et iste est verus et rectus intellectus illius, si bene ponderatur, una cum allegatis in contrarium. Si autem venis ex intervallo, tunc licet resistere, quia nec tibi ex intervallo licet recuperare, auctoritate propria, immo incideres pœnam l. *si quis in tantam*, C. Vnde vi; et intellige ex intervallo, ut notat glossa ff. De vi et vi arm., l. iii, § *eum igitur*. Si autem non possideo vi, sed precario, tunc post denegatam restitutionem licitum est tibi incontinenti vim vi repellere, nec licet mihi resistere. Nam denegando videor spoliare, ut l. *vitia*, C. De acquir. poss.; et tunc procedit quod vim vi repellere licet, ante autem denegatam non procederet, licet possem revocare precarium, ut l. *cum precarium*, ff. De precario. Si autem possideo clandestine a te, tunc quidquid dicat glossa in l. i, § *interdictum*, ff. Vti poss., et Iacobus de Porta Ravennate, in l. i, C. Vnde vi. Credo cum Dino quod non sit licitum tibi me expellere, sed licet tibi ingredi et si te non admisero, extunc sit violenta, ut l. *clam*, § *qui ad nundinas*, ff. De acquir. poss.; et tunc procederet. Si autem non possideo vitiose a te, sed a tertio, tunc licet mihi contra te, quandocunque volentem mihi violentiam inferre, vim vi repellere, ut l. *Fulcinus*, § *quid si adversus*, ff. Ex quibus ca. in poss. eatur. Hæc dixi, salvo iudicio tot et tantorum super hoc dubio disputantium, subiciendo dicta quorumcunque correctionibus veritatem perquirentibus.



*An, etsi liceat res defendere, defendens etiam cum moderamine inculpatae tutelæ, [Cap. cvi.]  
si occidat, vel mutilet, evitet pœnam irregularitatis ?*

Tertio quæritur, numquid vim vi repellendo circa res suas, si contingat vim repellentem occidere, vel mutilare, vim inferentem, evitet pœnam irregularitatis ? Et pono ubi hoc faciat cum moderamine inculpatae tutelæ, quid alias non præcederet quæstio. Et videtur quod evitet. Nam pro defensione personæ, evitat pœnam illam, ut in Clem., *si furiosus*, De homicidio. Ergo pro defensione rerum probatur consequentia. Nam iura permittentia vim vi repellere parificant personam rebus, quia utroque casu licet, ut l. i, C. Vnde vi ; et l. i, § *vim vi*, ff. De vi et vi arm. ; et l. *scientiam*, § *qui cum aliter*, ff. Ad legem Aquiliam. In contrarium facit dicta Clemen., *si furiosus*, De homicidio. Nam ibi textus loquitur stricte de occisione vel mutilatione occisoris et sui. Et hanc credo veram, et moveor ex hoc. Nam irregularitatem contrahit quis occidendo vel mutilando, et sine dolo, ut patet in iudice, li dist., *qui in aliquo* ; et casu occidente, ut notat l dist., *de his* ; et cap. *sicut dignum*, De homicid. ; et cap. *sententiam*, Ne cler. vel monach. ; et cap. *in archiepiscopatu*, De raptoribus. Quilibet igitur occidens qualitercunque irregularis efficitur, nisi in casibus exceptis a iure. Cum igitur excipiat casus defensæ, intelligetur ille casus stricte et modificate, ut ius excipit cum sit ius exorbitans, et sic stricte intelligendum, ut regula *quæ a iure*, De reg. iur., Lib. VI.

*An pro rebus suis defendendis contra clericum, excommunicationem incidat, [Cap. cvii.]  
manus iniciendo ?*

Quarto quæritur, an pro rebus suis vim vi repellendo contra clericum incidat excommunicationem, manus iniciendo ? Apparet quod sic, per capitulum *si quis suadente*, xvii, q. iv ; et cap. *nuper*, cum ibi notatis, De sent. excommunicationis. Confirmatur. Nam incidit pœnam irregularitatis, ut supra proxima quæstione. Ergo et hanc, cum ambæ sint pœnæ spirituales, et facilius quis incidat excommunicationem quam irregularitatem, ut claret. Solutio. Innocentius in cap. *olim*, De restit. spoliatorum, tenet quod non incidat excommunicationem vim vi repellens, si alias, nisi manus iniciendo, non possit vim repellere, et hoc faciat cum moderamine inculpatae tutelæ. Hanc opinionem credo veram, et moveor, quia et quis incidat excommunicationem per manus iniunctionem in clericum violentam, debet subesse diabolica persuasio, quod probat textus in cap. *si quis suadente diabolo*, xvii, q. iv. Et si bene discurras per iura infligentia pœnam excommunicationis propter manum iniectam, non invenies quod manus iniecta in clericum hoc casu sit aliqua de manibus de quibus iura exprimunt sic puniendo. Nam iura puniunt manum violentam, ut prædicto cap. *si quis suadente*, xvii, q. iv ; et De sent. excom., per totum. Hæc non est talis, immo est violentiæ repulsoria. Pununt temerariam, ut in cap. *contingit*, De sent. excommunicationis. Hæc non est talis, immo discreta lege permittente, puniunt quasi violentam manum, ut cap. *nuper*, eod. titulo.

Hæc est vera manus et permissa. Puniunt necem, ut cap. *universitatis*, ut cum mandatur percuti ; et cap. *cum quis*, eod. tit., Lib. VI. Puniunt animum, ut dicto cap. *cum quis*, ut cum ratum habet suo nomine factum. Puniunt neglectum, ut cap. *quantæ*, eod. titulo. Hic nihil de prædictis.

Ad allegata in contrarium facile est respondere. Ad canonem *si quis suadente*, est responsum per supra dicta. Ad id quod dicitur de irregularitate, clara est ratio differentię. Nam excommunicationem nemo incidit sine dolo, irregularitatem sic, de quo dicitur, ut notat glossa, in Clem. *si furiosus*, sæpius allegata in pænultima glossa.

[Cap. cviii.] *An pro rebus defendendis, vocatis amicis, licitum sit subsidium impendere ?*

Quinto quæritur, an licitum sit, pro repulsa violentię circa res, advocare amicos, et eis licitum sit subsidium impendere ? Glossa in l. iii, § *eum igitur*, ff. De vi et vi armata, notat quod sic ; etiam illata violentia in rebus. Et hanc credo veram, et moveor. Nam, ut dicunt iura, licitum est obviare errori, ubi obviari potest. Alias non obvians consentire videtur, lxxxiii dist., *error*, et \* cap. *qui consentit*, cum cap. sequenti. Igitur licitum est amicis in hoc iuvare proximum suum, ut supra dictum est, quia hoc provenit ex radice caritatis, ut cap. *proximos*, De Pœnit., dist. ii. Et si hoc licitum est, statim solvitur quæstio qua quæri posset, an incidat excommunicationem manus iniciens in clericum, sic violentiam propulsando, pro rebus proximi. Quia non incidit, cum non sit aliqua de punitis a canone, immo est permissa.

[Cap. cix.] *An pro rebus licitum sit contra omnes vim vi repellere contra quos licitum est pro personis ?*

Sexto quæritur, an pro rebus licitum sit contra omnes vim vi repellere contra quos licitum est pro personis ? Solutio. Quod sic, in personis quæ valent habere bona, ut excludam servos, monachos, et similes. Fateor tamen quod moderamen tutelæ diversificari debet, attenta varia personarum qualitate. Nam aliter, et mitius, contra patrem quam contra penitus extraneum, et sic de singulis quæ consideranda venirent, inspectis singulis circumstantiis, cum non sint hæc iure limitata, ut l. i, ad finem, ff. De iure deliber. ; et cap. *de causis*, De offic. iud. delegati.

[Cap. cx.] *An pro rebus depositis vel commodatis liceat vim vi repellere ?*

Septimo quæritur, an pro rebus depositis et commodatis sit licitum vim vi repellere ? Et videtur quod non, per l. i, C. Vnde vi, quæ loquitur de possessis, et iuste. At hæc non possidentur per commodatarium vel depositarium, ergo non licet in his vim vi repellere. Solutio. In his et similibus, vindicat

\* Supplendum "xi, q. iii,".



sibi locum quod liceat vim vi repellere, nam pro talibus interdictum vi bonorum raptorum competit depositario, vel commodatario, si hæc sint rapta, ut l. *prætor ait quæ est lex*, § *in hac actione*, ff. Vi bonorum raptorum. Ergo multo magis ipsis defensa conceditur, ut regula *invitus*, § *cui damus*, ff. De reg. iuris; et l. una, ff. De fonte; regula *qui ad agendum*, De reg. iur., Lib. VI; etiam quia isti tenentur. Ergo. Non obstat l. i, C. Vnde vi, quia licet loquatur in possessione, non tollit tamen quominus in aliis detentatis, pro quibus iura detenantibus actiones concedunt, ut supra. Vel dic quod verbum "possidere" sumitur large, ut implicet iustam detentationem, ut l. *officium*, ff. De rei vindic.; et nota in cap. *pastoralis*, De causa possessionis et proprietatis.

*Qualiter liceat hoc particulare bellum indicere ?*

[Cap. cxii.]

Circa septimum principaliter quæsitum, videlicet, qualiter sit licitum vim vi repellere ? est videndum.

*Quomodo licitum sit vim vi repellere cum moderamine inculpatæ tutelæ ?*

Et huic respondet textus quod licet cum moderamine inculpatæ tutelæ.

*Quid sit "moderamen inculpatæ tutelæ," et quæ in eo requirantur ?*

Sed in dubium revocatur quid velint hæc verba, hoc est, quæ sunt illa quæ requiruntur ad hoc moderamen ? Communiter doctores dicunt quod sunt illa quæ æquivalent illatæ violentiæ, in qualitate armorum, in cursu temporis. Item æquivalentia in ipso actu violento ne alias excedendo censeatur vindicta, sed circa hoc dubitatur.

*An liceat vili et debili cum ense se defendere contra fortem et robustum, pugno tantum percutientem ?* [Cap. cxiii.]

Et primo pone fortis et robustus homo vult me percutere pugno, ego sum vilis, qui non possum resistere pugno. Numquid liceat mihi defendere me cum ense ? Videtur quod sic, quia æqualitas ubique est ponderanda, ut l. ult., C. De fruc. et lit. expen.; et l. *si cum dies*, ff. De arbitr.; regula *in iudiciis*, De reg. iuris, Lib. VI. In contrarium videtur. Nam, si quis vult mihi violenter surripere, et ego, viribus corporis impar, ipsum percutio cum ense, impune iam fieret compensatio corporis ad rem, quod esse non debet, ut l. ult., C. De sacrosanct. ecclesiis.

Iacobus de Arena distinguit, aut quis vult propulsare violentiam illatam personæ, aut illatam rebus. Primo casu, licet et cum armis et qualitercunque, si res aliter reparari non potest, ut l. *si quis*, De appell., Codicis. Nam si possum occidere furem ubi non cognosco, et si non potest mihi in rebus furatis provideri per iudicem, ut l. *furem*, ff. Ad legem Corneliam de sica.; multo magis licet occidere ubi persona aliter salva esse non posset. Secundo casu

quando pro rebus, tunc aut violentia rebus illata per viam iudicii reparari potest, et tunc non licet qualitercunque, immo cum qualitate armorum, non autem factorum, quia non debeo personam percutere pro defensione rei, ubi etiam aliter salva esse non possit, dummodo per viam iudicii reparari possit. Si autem per iudicium non potest reparari, tunc licet qualitercunque defendere, etiam personam occidendo, ut l. *furem*, ff. Ad legem Corneliam de sicariis. Et sic intelligitur l. i, C. Vnde vi; et l. iii, § *eum igitur*, ff. De vi et vi arm. Sic igitur intellige moderamen inculpatæ tutelæ.

[Cap. cxiii.]

*An, etsi liceat incontinenti se defendere, quomodo intelligatur illud "incontinenti"?*

Secundo quæritur circa concursum temporis, quia dicunt textus quod debet fieri "incontinenti." Quæritur quando intelligatur "incontinenti." Aliqui dicunt fieri incontinenti, si fiat in ipsa flagrantia facti, si autem fiat iam illata iniuria, tunc debet iudicem adire. Alii dicunt incontinenti fieri etiam si fiat post, antequam divertat ad actus extraneos, ut l. *quod ait*, in fine, ff. Ad leg. Iul. de adulteriis. Iacobus et Petrus distinguunt. Aut loquimur de violentia illata personæ, et tunc dicitur repelli incontinenti, si fiat in ipsa flagrantia facti. Sic intelligitur l. *scientiam*, § *qui cum aliter*, ff. Ad leg. Aquil.; l. *ut vim*, ff. De iustit. et iure. Aut loquimur de violentia illata rebus, et tunc dicitur incontinenti repelli, etiam post flagrantiam facti, dummodo divertat ad actus extraneos, ut ff. De vi et vi armata, l. *qui possessionem*; et l. iii, § *eum igitur*, eodem titulo. Ratio diversitatis est. Nam illata iniuria personæ non potest amplius restaurari, sed res ablata recuperari potest, et sic non facta diversione ad actus extraneos, etiam si amicos quærat, et redeat ut recuperet, dicitur incontinenti, ut notat glossa in dicta lege iii, § [igitur] *eum igitur*, ff. De vi et vi armata. Sic intellige moderamen in concursu temporis.

[Cap. cxiv.]

*De æquivalentia in ipso actu violento. Qualiter fieri debeat?*

Tertio quæritur de moderamine in æquivalentia in actu violento, videlicet, quia fieri debet ad defensionem, non autem ad vindictam. Et licet varie scribatur, totum hoc ponderari debet inspectis conditionibus personarum.

[Cap. cxv.]

*An vindicasse videar, non defendisse, si spoliatores meos de possessione mea expuli, qui, antequam expellerem eos, satisfacere volebat de possessione restituenda?*

Quarto quæritur, quis expulit me de possessione, et post expulsionem paratus est satisfacere de restituenda, si appareat eum iuste non fecisse, sed nihilominus ipsum expello, numquid videor fecisse ad vindictam? Glossa



tenet quod sic, in l. i, C. Vnde vi; sed communiter glossa reprobatur. Nam non debuit se committere illi fragili cautioni, ff. Ad Treb., l. *quia poterat*, et l. *nam quod*, cum similibus.

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*An paratum ad me percutiendum expectare debeam, vel eum prævenire?* [Cap. cxvi.]

Quinto quæritur, numquid, si videam aliquem paratum ad percutiendum me, an debeam expectare quod me percutiat, an debeam prævenire. Glossa in dicta l. i arguit pro et contra, et determinat quod non debeam expectare. Petrus dicit glossam intelligendam habita distinctione personarum, nam aliqui sunt audaces et prompti ad percutiendum, et tales non sunt expectandi, aliqui timidi, et tales non sunt statim præveniendi, et sic modificat glossam argutam, l. i, C. Si quis Imperatori maledixerit.

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*An miles quem vicinus aggreditur, censeatur vim vi repellere, si expectet et percutiat, cum alias fugere valeat?* [Cap. cxvii.]

Sexto quæritur, quidam egregius miles est aggressus a vicino suo, et evadere posset fugiendo, tamen, reputans sibi ad vituperium, expectat, et resistit, et percutit, numquid censeatur vim vi repellere? Apparet quod non, per l. *scientiam*, § *qui cum aliter*, ff. Ad leg. Aquiliam. Moderni doctores tenent contrarium per l. *in eadem*, ff. Ex quibus caus. maiores. Nec obstat § *qui cum aliter*, quia iste non poterat evadere sine periculo famæ suæ et honoris sui, quæ non possunt per iudicem reparari, ut l. *Iulianus*, ff. Si quis omissa causa testamenti.

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*An si vulneratus, post vulnera insequatur vulnerantem, et ipsum percutiat, puniri debeat ut dolosus, vel ut culpabilis?* [Cap. cxviii.]

Septimo quæritur, quidam vulneratus, post vulnera insequitur vulnerantem, et ipsum percutit, quod non licet, ut l. *si ex plagis*, § i, et l. *qua actione*, § *si in colluctatione*, ff. Ad leg. Aquiliam; numquid punietur ut dolosus, an ut culpabilis? Quidam dicunt quod ut culpabilis, quia inconsultus calor vitio calumniæ caret, ff. Ad S. C. Turpil., l. i, § *quæri*; ff. Ad leg. Corn. de sica., l. [iii] iv, § *cum quidam*; ff. De pœnis, l. *respiciendum*, § *delinquunt*. Alii dicunt quod ut dolosus, cum se vindicare non debuerit. Iacobus de Arena dicit primam opinionem humaniorem, ff. De pœnis, l. *interpretatione*; ff. De reg. iur., l. *in totum*; secundam rigidiorum, C. De iniur., l. *si non convicii*. Credo primam veriore, etiam de iure, per iura prius allegata.

[Cap. cxix.]

*An violentia illata personæ possit per amicos propulsari ?*

Octavo quæritur, numquid violentia illata personæ possit per amicos propulsari, sicut illata rebus, ut notat glossa in § *eum igitur*. Glossa in l. i, C. Vnde vi, dicit quod non, per l. *cum fundum*, ff. De vi et vi armata. Alii distinguunt, aut amici erant in comitiva violentiam passi, aut non. Primo casu, licet, per l. *item apud Labeonem*, § *si quis virgines*, ff. De iniuriis. Secundo casu, non licet. Iacobus de Arena tenet indistincte quod licet. Nam si negotia nostra possunt per alios iuvare, ut l. i, ff. De neg. gest., multo magis persona, quæ rebus præfertur, ut l. *sancimus*, C. De sacrosanct. ecclesiis. Probare videtur textus in l. *Gracchus*, C. Ad legem Iuliam de adulteriis. Non obstat l. *cum fundum*, quia ibi mandabatur ex intervallo, quod non liceret etiam principali. Huic opinioni obstat textus l. *ut vim*, ubi dicit textus "ob tutelam sui corporis," et Clem., *si furiosus*, De homicidio.

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[Cap. cxx.]

*An serviens, de mandato domini sui, ipsius uxorem interficiens excusetur ?*

Nono quæritur, pone quidam mandavit servienti suo quod uxorem suam, quam habebat suspectam de adulterio, occideret, alias ipsum occideret, serviens interfecit, numquid excusatur ? Videtur quod non. Nam potius debet omnia mala pati quam malo consentire, ut l. *isti quidem*, in fine, ff. Quod met. causa. Videtur textus in l. *scientiam*, § *qui cum aliter*, ff. Ad leg. Aquiliam. In contrarium facit l. *ut vim*, ff. De iustit. et iure ; nam hoc fecit ob tutelam sui corporis. Ergo. Iacobus de Ravennate distinguit, aut mulier erat alias peritura, aut non, ut l. *si quis fumo*, ff. Ad leg. Aquil. ; et l. *si alius*, § *est et alia*, ff. Quod vi aut clam. Petrus tenet indistincte servientem excusari, quia fecit ob tutelam sui corporis, ut l. *ut vim* ; etiam quia caritas incipit a seipso, ut l. *præses*, C. De servitut. et aqua ; item quia licet proprium sanguinem redimere, ut l. *transigere*, C. De transactionibus. Ego crederem distinguendum. An servienti incumberet necessario mortis propriæ periculum, nisi uxorem mandantis interficeret, et tunc crederem opinionem Petri veram. An foret aliqualis spes salutis, etiam domino resistendo, et tunc contrarium crederem, per iura supra allegata.

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[Cap. cxxi.]

*Quis sit finis particularis belli ?*

Circa ultimum principaliter quæsitum, videlicet, quis sit finis huius belli ? Quæstionis huius patet solutio per supra dicta. Nam conservatio suiipsius et bonorum est finis huius belli, et in hoc finaliter tendit, et propter hoc est permissum, ut clare patet per supra deducta.

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*Quintus tractatus tertii principalis, scilicet, de Particulari Bello quod fit ob defensam corporis mystici, quod "Represaliæ" nuncupatur. Vnde et a quo ortum habuerint Represaliæ, et propter quid insurrexerint?* [Cap. cxxii.]

Ampliando aliququaliter quæsitum et materiam represaliarum, præmittam fundamentum, propter quod insurrexerunt represaliæ. Quo præmisso, examinabo causas examinandas. Ecce Altissimus Creator a principio creavit cælum et terram, et quæ in eis sunt, necnon angelicam et humanam naturam, spiritualia et temporalia, et ipsa per seipsum rexit, et homini quem creavit præcepta dedit, et transgredienti pœnam imposuit, Genesis ii capitulo. Qualiter autem per seipsum rexerit apparet, nam per seipsum, et non per ministrum, delicta puniebat. Nam Cain, Lamech, et quosdam alios reges, punivit, ut legitur Genesis iv et v capitulis. Et hæc mundi gubernatio processit usque ad tempora Noe. A tempore autem Noe cœpit mundum regere per ministros, quorum primus fuit Noe, de quo quod fuerit rector populi apparet. Nam Dominus commisit sibi gubernationem et administrationem arcæ, Genesis v et vi capitulis. Et per arcam significatur Ecclesia. Et qualiter Dominus Noe et filiis commiserit gubernationem legitur Genesis ix capitulo, et, licet Noe sacerdos non fuerit, legitur tamen officium sacerdotis exercuisse, antequam leges populo darentur, Genesis viii capitulo. In hac autem gubernatione et vicaria successerunt Patriarchæ, Reges, et Iudices, qui fuerunt pro tempore in regimine populi Iudæorum. Et illa duravit usque ad Christum, qui fuit naturalis Dominus et Rex Noster, de quo legitur in Psalmo, "Deus iudicium tuum regi da." Ipse autem Christus duo luminaria dimisit in terris, luminare maius et diurnum, scilicet, Summum Pontificem, luminare minus et nocturnum, scilicet, Romanorum Principem, quibus commisit administrationem et gubernationem mundi, uni in spiritualibus, et alteri in temporalibus. Tempore primitivo, quo Dominus per seipsum gubernabat, non fuit opus represaliis, cum per Dominum iustitia exhiberetur. Tempore Noe et successorum, in regimine populi Iudæorum, non fuit opus represaliis, cum per ministros iustitia exhiberetur, et subditi de populo recognoscerent superiorem cui obtemperabant. Tempore præcedente Summorum Pontificum et Romanorum Imperatorum, cum omnes subiciebantur et de iure et de facto, non erat opus represaliis, cum per principes, iuris ordine servato, iustitiæ complementum exhiberetur. Postquam autem Imperium paulisper cœpit exinaniri, adeo quod sint qui de facto nullum recognoscunt superiorem, et per eos iustitia negligitur, idcirco fuit opus subsidiario remedio, deficientibus ordinariis, quibus exstantibus, ad illud nullatenus recurrendum, ff. De minor., l. *in causæ*; ff. De oper. nov. nunci., l. *in provinciali*. Istud autem remedium extraordinarium ortum habuit ex iure gentium. Nam est quædam species belli liciti. Nam licitum est ob tutelam corporis sui arma movere, ff. De iustit. et iure, l. *ut vim*; C. Vnde vi, l. i; De restitut. spoliati., cap. *olim*; et nedum corporis sui privati et individualis, immo et mystici. Nam universitas est unum corpus, cuius partes sunt singuli de universitate, ff. Quod cuiuscunque universit., l. i; et sic universitati licitum est defendere partes sui corporis. Habuit etiam ortum a iure divino, ut legitur

xxiii, q. ii, cap. *Dominus Noster*. Ex prædictis omnibus infertur propter quid insurrexerit istud remedium. Nam, finaliter, ut iustitia debitum sortiretur effectum, occasionaliter, propter defectum remedii, insurgens a neglectu gubernantium et regentium populos, et carentia recognitionis superiorum de facto, quo tempore fuerit opus hoc extraordinario remedio. Ex quo infertur quod etiam hodie raro hoc remedium locum sibi vindicat. Nam, negligente iudice sæculari, recursus habendus est ad ecclesiasticum, De foro competenti, *ex tenore*, et cap. *licet*, et cap. *ex parte*; Qui filii sint legitimi, *per venerabilem*; licet etiam de facto male obtemperetur. Quibus sic prædiscussis, restat examinandum quæ sint causæ represaliarum, videlicet.

[Cap. cxxiv.]

*De causis represaliarum.*

Quæ sit causa productiva? Quæ formalis? Quæ finalis? Videndum est etiam de quibusdam quæstionibus circa hoc concurrentibus.

*De causa efficiente, sive productiva, represaliarum.*

Ad primum, quæ sit causa productiva, hoc est quærere, quis possit indicare represalias. Hic attendendum est quod, ut supra dictum est, nulla lege positiva, canonica vel civili, disponitur represalias indici debere. Nam utraque lege disponitur modus consequendi effectus iustitiæ. Immo inhibitum est occupare rem propriam, C. Vnde vi, l. *si quis in tantam*; et l. *exstat*, ff. Quod met. causa. Immo etiam hæc expresse inhibentur lege civili et canonica, ut in Authent., Vt pign. non fiant; et cap. uno, De iniur., Lib. VI. Sed deficientibus iuris positivi remediis, ad hoc fuit habendus recursus, ut fiat belli indictio, ne depereat iustitia. Hæc autem belli indictio spectat ad illum solum qui superiorem non habet, ut l. *hostes*, ff. De captivis. Nam habens superiorem auctoritate propria, non potest violare iuris remedia. Ille ergo indicare potest qui superiorem non habet, et de iure, vel de facto. Expedi etiam quod ille contra quem indicuntur non habeat superiorem, vel si habet, negligat iustitiam facere. Ex quo quidam inferunt quod potestas civitatis, quæ non recognoscit superiorem de facto, non possit indicare, nisi specialiter habeat in mandatis, sed haberi debet recursus ad universitatem, apud quam est plenum ius, et eius auctoritate indicentur. Istud non credo verum, ubi universitas transtulerit omnimodam potestatem in rectorem, nam tunc potest totum quod universitas, sicut dicimus in habente generalem cum libera, ut l. *procurator qui*, ff. De procuratoribus. Secus, si limitatam. Inferunt etiam quodsi Comes, Marchio, vel similis, subditus est Principi, quod sine Principis auctoritate indici non poterunt, argumentum prædictæ regulæ quam tradidit in cap. *olim*, i, De restit. spoliatorum. Et hæc procedunt loquendo de iure communi. Nam, si loquamur secundum dispositionem iurium municipalium, secundum quæ conceditur facultas indicendi represalias, illi indicare poterunt quibus a lege municipalis conceditur. Et hæc, ut dixi, conceduntur propter urgentem necessitatem,



sicut aliquando propter necessitatem concedit ius civile facultatem alicui ius sibi dicendi, ff. Quæ in fraudem cred., l. *ait prætor*, § *si debitorem*; ff. Quod vi aut clam, l. *alius*, § *bellissime*. Ex prædictis inferri potest quo iure petatur indictio represaliarum. Nam si vigore statuti concedantur conditiones, ex lege hoc petitur, ff. De condict. ex lege, l. *una*. Si autem loquamur secundum dispositionem iuris communis, dicunt quidam quod nec actio nec officium intentatur. Ratio. Nam solo iure gentium hæc facultas conceditur, quo iure omnia expediebantur via regia, ff. De orig. iuris, l. *ii*, in principio. Sic dicunt hodie requiri manum regiam, secundum statuta divina et iure gentium. Hoc non credo verum. Nam licet facultas non sit nisi servetur modus traditus. Nam primo debet recurri ad remedia ordinaria, quibus deficientibus, ad hoc recurritur, et hoc constare debet iudici requisito, ut indicat represalias, et, si ille, contra quem petuntur, monitus comparuerit, auditur pro defensu<sup>s</sup> (*sic*), et infra dicetur, et sequitur sententia, qua pronuntiatur indicendas, vel non. Quarto fuit opus actione vel officio, nam secundum modum petitionis formari debet sententia, ut l. *ut fundum*, ff. Communi divid.; et cap. *licet Heli*, De simonia. Confirmatur. Nam licet de iure gentium hæc facultas processerit, tamen de iure civili approbata est, ex mente ipsius, licet non verbis expressis. Nam est ex mente iuris civilis, immo etiam ex verbis, quod contra rebelles et inobedientes iuri procedatur manu militari, ut l. *qui restituere*, ff. De rei vindicatione. Et sic proditum est remedium implorationis officii, ut ad hanc manum militarem recurratur, remediis opportunis deficientibus.

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*De causa materiali represaliarum.*

[Cap. cxxv.]

Restat examinare causam materiale. De materiali ergo causa est videndum, de materia in qua, de materia circa quam, de materia contra quam, quæ est obiectum, et de materia ex qua.

*Quid sit materia in qua ?*

Materia in qua est persona vel suppositum, cui hæc facultas conceditur.

*Quid sit materia circa quam ?*

Materia circa quam sunt res circa quas facultas hæc conceditur.

*Quid sit materia contra quam ?*

Materia contra quam, sive obiectum, est suppositum contra quod conceditur, ut puta civitas, vel alia universitas.

*Quid sit materia ex qua ?*

Materia ex qua est causa ex qua hæc facultas conceditur.

Redeundo ad examinationem, quæro quibus conceditur hæc facultas represaliandi. Solutio. Civibus conceditur, propter rationem superius tactam.

Nam cives sunt pars mystici corporis, id est, civitatis, ut l. i, ff. Quod cuiuscunque universitatis. Hinc appellata est civitas, quasi civium unitas, ut notatur in cap. *si civitas*, De sent. excom., Lib. VI. Et, ut supra deductum est, licitum est cuilibet defendere corpus suum, ut l. *ut vim*, ff. De iustit. et iure; et l. i, C. Vnde vi. Et hoc procedit tam in corpore mystico quam in individuali. Hic quæstiones occurrunt.

*An incolis represaliæ concedantur?*

Et primo quæritur an incolis concedi debeant. Quidam hic distinguunt, an incolæ subeant onera, et tunc concedi debeant; an non subeant, et tunc concedi non debeant. Ratio secundi membri. Nam qui non sentit onus, nec commodum sentire debet, ut l. *manifestissimi*, § *sed cum in secundam*, C. De furtis; regula *secundum naturam*, ff. De regul. iuris; et regula *qui sentit*, Lib. VI. Probatur per l. *qui sub prætextu*, C. [De episc. et clericis] De collegiatis lib. xi; et [l. i, C.] ff. De collegiis [lib. xii], *collegia si quæ fuerint illicita*. Probatur. Nam non habet quis privilegia dignitatis, nisi re ipsa ipsam gesserit, C. De consulibus, l. *nemini*, lib. xii; [C.] ff. De excusat. [tut.], l. *sed et milites*, § [quoniam] *quæsitum*; ff. De testam. mil., l. pænultima. Hanc opinionem non puto veram indistincte, immo puto distinguendum sic. Aut incola non subit onera propter eius contumaciam, quia requisitus non vult subire, ut tenetur. Nam inter civitatem recipientem quem ad incolatum et incolam, tacite oritur quidam contractus ultro citroque obligatorius, quo incola tenetur subire onera, ff. Ad municip., l. i, et l. *incola*; et civitas tenetur ad eius protectionem, ut l. *illicitas*, § *ne potentiores*, ff. De offic. præsidis. Et hoc casu, si denegat adimplere contractum ex parte sua, nec civitas tenetur ipsum defendere, nec ille hoc petere potest, ut l. *Iulianus*, § *offerri*, ff. De act. empti. Aut incola non subit onera, quia super hoc privilegiatus est a civitate, quæ hoc onus remittere potuit, ut l. *si quis in conscribendo*, C. De pactis; et De episcop. et cleric., *vel a Principe*. Et tunc incolæ concedi debent, nam privilegia concessa in eorum favorem redundare non debent in eorum læsionem, C. De legibus, l. *quod favore*; regula *quod ob gratiam*, Lib. VI. Et hæc intelligas de privilegiato post assumptionem.

[Cap. cxvi.]

*An civibus non subiectis iurisdictioni civitatis, et alias non facientibus factiones, sint indicendæ represaliæ?*

Secundo quæritur, an civibus non subiectis iurisdictioni civitatis, et alias non facientibus factiones, sint indicendæ repræsalie. Quidam distinguunt, an non sint subeuntes subiecti ex privilegio, ut clerici, ut l. ii et Authent., *statuimus*, C. De episcop. et cleric.; an propter dignitatem sæcularem, ut l. ii, C. Vbi senat. vel clarissimi; ff. De vacat. mun., per totum; et talibus sunt concedendæ, an non subeant propter contumaciam, et tunc non. Ratio primi, ne redundet in eius læsionem quod in favorem inductum est, et quia in civibus ex nativitate perficitur obligatio inter ipsum et civitatem, quæ non potest



mutari, ff. Ad municip., l. *assumptio*. Secus in incola, quia in incola non perficitur nisi per receptionem, ut l. i, ff. Ad municipalem. Ratio secundi est propter contumaciam suam, ut ff. Ex quibus cau. maior., l. *sed etsi per prætorem*, § *sed si dum*.

*An civi per conventionem concedantur represaliæ contra civitatem originis?*

[Cap. cxxvii.]

Tertio quæritur, an civi per conventionem concedantur represaliæ contra civitatem originis? Apparet quod non, nam ubi ex aliquo factò ius mihi quæritur, si illud fiat meum, non obligor, ut l. *sed et si quis*, § *et regulariter*, ff. De usufruct. legato. Sed si fiat iniuria huic civi civitati originis, quæritur ius indicendi represalias, ergo contra eam non competit. Confirmatur. Quia civitas originis præfertur, ut l. *assumptio*, ff. Ad municipalem. Confirmatur. Nam civitas originis poterat in subditum suum statuere, antequam efficeretur civis alterius per conventionem, nec civitas per conventionem potest conqueri. Confirmatur a simili usufructuarii, qui nuntiare potest novum opus omnibus præterquam domino, ut l. i, in fine, ff. De oper. nov. nuntiatione. Confirmatur a simili. Nam, habens Publicianam illam, intentat contra omnes præterquam contra dominum, ff. De Publiciana, l. ult. Probat textus in l. *de iure*, ff. Ad municipalem. Nam de his quæ aguntur inter civem et civitatem solum coram iudice illius civitatis agi debet. Confirmatur. Nam remedium extraordinarium est, ut supra probatum est, extraordinaria autem remedia non dantur filio contra patrem, C. Qui et advers. quos, l. finali. Sed maior est potestas civitatis in civem quam patris in filium, ff. De iustit. et iure, l. ii; et ff. De captivis, l. *postliminium*, § *filius*; ff. De castrensi peculio.

In contrarium probatur. Nam si duo habent eundem subditum, uterque potest defendere adversus iniuriam quæ ab alio infertur. Nam civitas punit patrem offendentem filium, ff. De patri.<sup>10</sup>, per totum. Confirmatur. Nam si duo habent ius in re, licet unum ius sit debilius alio, tamen habens ius debilius agit contra habentem ius potentius, si damnificat rem in qua concurrunt illa duo iura, ff. Ad leg. Aquil., l. *item Mela*, § *fin.*, et l. *si dominus servum*, eodem titulo. Confirmatur. Nam si duo sunt domini eiusdem servi, si unus in eum delinquat, potest per alium coerceri, ff. Ad leg. Aquil., l. i. Confirmatur. Nam pro iniuria repellenda licet convocare amicos, ff. De vi et vi armat., l. iii, § *eum igitur*; et De homicid., *significasti*; De sent. excom., *dilecto*, Lib. VI. Solutio. Quidam dicunt indistincte quod possint indici, et ratio est quia facultas indicendi represalias succedit in locum deficientis iurisdictionis. Sed si civitas civem offendit, licitum est superiorem adire, ut l. *metum*, § *animadvertendum*, ff. Quod met. causa. Ergo deficiente iurisdictione locus est represaliis. Probatur per l. *sed si ex dolo*, ff. De dolo. Confirmatur. Nam quælibet potestas censetur legitima potestas, cum quis bene utitur, non autem cum spoliatur, ut l. *ei qui fundum*, § *si tutor*, ff. Pro emptore; ff. De furt., l. *interdum*, § *qui tutelam*, et sic dicunt procedere hinc inde allegata. Ego non puto hanc conclusionem sic indistincte veram, sed puto distinguendum an

iniuria irrogata a civitate originis insurgat ex facto præcedenti conventionem, per quam effectus est civis alterius civitatis, an insurgat ex post commisso. Primo casu, non possunt concedi represaliæ per civitatem conventionis. Nam oportet quod sit pars corporis defendendi, tempore quo iniustitiam patitur. Nam ad novam civitatem non transit hoc ius, ff. De servo corrupto, l. *doli*, § fin. ; ff. Depositi, l. i, § *si servus* ; et l. *quæcunque*, ff. De oblig. et actionibus. Per quæ infertur quod facto civi per conventionem post iniustitiam factam non debent concedi represaliæ. Secundo casu procedit prædicta solutio.

[Cap. cxviii.]

*An civibus et habitis pro civibus, licet limitate, represaliæ concedantur ?*

Quarto quæritur, quid de civibus et habitis pro civibus, limitate tamen ? Ecce potestas civitatis quoad quid est civis, ut l. *cives*, C. De incolis. Stipendiarii etiam, ubi merentur stipendium conveniuntur, ut l. *municipes*, § fin., ff. Ad municipalem. Scholares etiam quoad quid, ut protegantur a rectoribus civitatum, ut in i, De pecunia constituta ff. ; et Authent., *habita*, C. Ne fil. pro patre. Numquid talibus represaliæ sunt concedendæ ? Quidam dicunt quod pro his, et in his in quibus habentur pro civibus, limitatæ sunt concedendæ represaliæ, ut si scholari fiat iniuria in spectantibus ad studium, et militi in spectantibus ad militiam, in aliis non, cum in aliis non reputetur de corpore.

[Cap. cxix.]

*An civibus unius civitatis, qui pacto vel statuto tractantur ut cives alterius civitatis, per eandem concedi possint represaliæ ?*

Quinto quæritur, an, si ex pacto vel statuto cives unius civitatis tractari debeant ut cives alterius, ipsis concedi debeant represaliæ per civitatem in qua tractari debent ? Solutio. Ponderanda sunt verba pacti et statuti, nam per illa verba tractentur ut cives, non efficiuntur cives, ut l. . . . (sic) *appellatione*, ff. De verb. significat. ; et ibi notandum, et ibi per Iacobum de Arena. Illa igitur verba intelliguntur ut tractantur in his quæ de iure communi fieri debent, ut l. *ei qui fundum*, § *si tutor*, ff. Pro emptore. Ita solvunt quidam. Hanc conclusionem non credo veram, immo credo ipsis indici debere. Nam fateor quod per illa verba non est effectus civis, sed ei debentur quæ debentur civi. Nam hoc probant verba a quibus recedi non debet, nec eorum proprio significato, ff. Qui et a quibus, l. *prospexit* ; ff. De leg., iii, l. *non aliter* ; et l. i, § *is qui navem*, ff. De exercitoria. Sibi ergo concedantur quæ civi conceduntur, at illi conceduntur represaliæ ut supra deductum est. Ergo. Nec obstat quod dicitur quod sibi concedi debent quæ de iure communi competunt, nam hoc remedium, servata debita forma, non est a iure communi inhibutum.

[Cap. cxx.]

*De materia circa quam.*

Restat videre de materia circa quam conceduntur, hoc est de rebus, et hoc est clarum. Nam in rebus mobilibus et immobilibus illorum contra quos conceduntur, quæ repertæ fuerint in territorio civitatis concedentis. Sed circa hoc quæri potest de pluribus.



*An contra res eorum qui capi non possunt vigore represaliarum indici possint represaliæ ?*

Et primo, an contra res eorum qui capi non possunt vigore represaliarum indici possint represaliæ ? Solutio. Si sint personæ quæ capi non possunt, propter inhabilitatem insurgentem ratione ætatis, vel furoris, vel consimilium, tunc in eorum res exerceri poterunt represaliæ, ff. De in ius vocando, l. *satisque* ; in Authent., Vt nulli iudicum, § *necessarium*. Si autem in personas exerceri non possunt, propter quandam prærogativam eis a iure concessam, ut sunt scholares et ambasciatores, tunc nec etiam contra res eorum quas deferunt, necessarias pro studio vel ambasciata, non poterunt exerceri, in aliis autem sic, ut ff. De publican., l. *si publicanus*. Per hoc inferitur solutio alterius quæstionis tritæ, ambasciator vel scholaris defert secum res aliorum, numquid in eas exerceri poterunt represaliæ ? Dic quod non, si sint eis necessariae, ut equi et similia, ut l. *censoria*, ff. De verb. significatione ; aliter sic.

*An represaliæ simpliciter indictæ exerceri possint contra bona existentia in territorio civitatis contra quam sunt indictæ, ut capiantur et reducantur in territorium civitatis indicentis ?* [Cap. cxxxi.]

Secundo quæritur, an represaliæ simpliciter indictæ exerceri possint contra bona existentia in territorio civitatis contra quam sunt indictæ, ut capiantur et reducantur in territorium civitatis indicentis ? Quidam dicunt quod non, quia "extra territorium," etc., ut l. *extra territorium*, ff. De iurisdictione [omn. iud.] ; et l. *cum unus*, § *is cuius*, ff. De rebus auctor. iudic. possidend. ; et cap. ii, De constit., Lib. VI. Præterea ingredi territorium alienum conceditur causa maioris tumultus. Ergo in dubio non videtur concessum, ut l. *non est singulis*, ff. De reg. iuris. Hanc conclusionem non credo veram, nam propter defectum iurisdictionis recurritur ad manum regiam, deficiente formula ius sollenniter dicendi, et sic ubique hoc fieri potest, quia ubique licitum est cuilibet defendere corpus suum, ut l. *ut vim*, ff. De iustit. et iure ; et l. i, C. Vnde vi. Etiam in simplici et generali concessione verba debent operari generaliter, ut proferuntur, ff. De leg. præstan., l. i, § *generaliter* ; etiam contingeret represalias nihil operari, ut si contra civitatem distantem, cuius cives nihil haberent, nec cives accederent in civitate indicente. Sic ergo intelligantur, ut in omnem eventum aliquid operari possint, ff. De legat., primo, l. *si quando* ; ff. De reb. dub., l. *quotiens* ; De reg. iur., l. *quotiens*.

*An, si una civitas inducat represalias contra aliam, potest Rector civitatis indicentis, scribendo Rectori civitatis contra quam, exercere represalias in res ibi situatas ?* [Cap. cxxxi.]

Tertio quæritur, an, si una civitas indicat represalias contra aliam, possit Rector civitatis indicentis, scribendo Rectori civitatis contra quam, exercere represalias in res ibi situatas ? Dicunt quidam quod, licet in executione

sententiæ hoc contingat, ut l. *a divo Pio*, ff. De re iudicata, § i; et l. *cum unus*, § i, De rebus auct. iudic. poss.; tamen hoc casu non. Et est ratio. Nam indictio represaliarum est quoddam particulare bellum, ad quod non potest quis compellere alium nisi subditum, ut in Vsibus Feudorum. Hic finitur lex Conradi, cap. *domino*. Sic dicere non credo. Nam supponit quod in executione sententiæ possit iudex lator sententiæ compellere iudicem bonorum, etiam non subditum, ad exsequendum, quod est falsum, quia par in parem non habet imperium, ff. De arbi., l. *nam magistratus*; ff. Ad S. C. Trebellianum, l. *ille a quo*, § *tempestivum*; De elect., cap. *innotuit*. Male tamen facit qui non exsequitur, adeo quod propter hoc convenietur coram superiore suo, nam donec, servata iuris dispositione, iustitia suum consequi potest effectum, non debent offendi iuris regulæ. In neutro igitur casu vindicat sibi locum compulsio, sed utroque casu honeste faciet exsequendo, quia sicut non deficiente iurisdictione requisitus debet exsequi, sic, deficiente iurisdictione, cum recurritur ad represalias, iuvare debet, licet compelli non possit. In civitatibus autem fœderatis, de quibus in l. *non dubito*, ff. De captivis, hoc fatentur de plano.

[Cap. cxxxiii.]

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*De materia contra quam.*

Restat videre de materia contra quam, quod proprie appellatur subiectum, circa quod plura quærentur.

*An represaliæ, indictæ per unam civitatem contra homines alterius civitatis, exerceri possint contra incolas illius civitatis?*

Et primo quæritur, an, si civitas Mediolanensis indixit represalias contra homines Bononienses, vel de Bononia, represaliæ exerceri possint contra incolas civitatis Bononiæ? Solutio. Ista verba "Bononienses" et "de Bononia" idem important, ff. De excus. tut., l. *sed reprobari*, § *amplius*, et ibi glossa. Sed ista verba "homines Bononienses" respiciunt municipales, ut l. i, ff. Ad municipalem; et verbum "municeps" est genus ad cives et incolas, ut notat C. De incolis, l. *cives*. Probat textus ff. Ad municipalem, l. *fili*, § *municeps*. Ergo, inferendo de primo ad ultimum, sequitur quod, ex natura verborum, contra incolas exerceri possint represaliæ. Et hæc vera, quando incolæ subeunt onera, ut l. i, Ad municipalem. Secus, si non subeunt.

[Cap. cxxxiv.]

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*An, eodem themate retento, puta si una civitas indixerit represalias contra homines alterius civitatis, exerceri possint contra eosdem, alibi morantes?*

Secundo quæritur, retento eodem themate, ut puta si civitas Mediolanensis indixerit represalias contra homines de Bononia sive Bononienses, an exerceri possint contra Bononienses alibi morantes. Quidam dicunt quod sic, quia



origo non mutatur, ut l. *assumptio*, ff. Ad municipalem. Alii distinguunt, an indicantur contra homines de provincia, et tunc non exercentur contra alibi morantes, quia non censentur de provincia, ut l. *provinciales*, ff. De verbor. signific. ; aut contra homines de una civitate, et tunc procedit prima opinio. Tertii distinguunt an alibi morentur, tamen intra eandem provinciam, et tunc contra illos exerceri possunt, aut in alia provincia, et tunc secus, per ea quæ notat glossa in l. *in adoptionem*, C. De adoptionibus. Quarti dicunt quod, secundum propriam significationem vocabuli "alibi morantes," censentur Bononienses, sed secundum communem usum loquendi secus, et communis usus loquendi prævalet, ff. De legat., iii, l. *librorum*, § *quod tamen Cassius* ; et sic contra istos non poterunt exerceri. Alii dicunt quod contra Bononienses alibi morantes, onera tamen subeuntes Bononiæ, poterunt exerceri. Si autem non subeant, secus, l. i, ff. Ad municipalem ; et l. <sup>(1)</sup> *si duas*, § *sed et reprobati*, § *amplius*, ff. De excusationibus ; et l. *cum scimus*, in fine, C. De agric. et censitis.

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*An represaliæ exerceri possint contra cives vel incolas alicuius civitatis, onera eiusdem subeuntes, qui etiam sunt cives alterius civitatis ?* [Cap. cxxxv.]

Tertio quæritur, an possint exerceri represaliæ contra cives vel incolas Bononienses, onera subeuntes Bononiæ, qui etiam sunt cives Mediolani. Videtur quod possint contra eos exerceri. Nam si potest civitas indicare contra non subditum, multo fortius contra subditum. Confirmatur. Nam propriarius potest petere ut usufructuario denegetur ius utendi propter contumaciam suam, et econtra, ut l. *si proprietarius*, et l. *hoc amplius*, § *si cum*, et § sequenti, ff. De damno infecto. A simili ergo hic, in duabus civitatibus in eundem civem ius prætendentibus. In contrarium tenent indistincte. Ratio. Nam hoc ius succedit in locum deficientis iurisdictionis. Sed civitas in civem suum bene potest iurisdictionem exercere, ergo non subicietur represaliis, ut l. i, § *utique* <sup>(1)</sup>, ff. Si quis test. lib. esse iussus. Præterea civitas tenetur defendere civem suum, ergo represaliæ indictæ non artabunt eum, ut l. *vindicantem*, ff. De evictionibus. Præterea, si quis Mediolanensis artaretur, tunc civitas sic concedens videretur contra seipsam, contra id quod habetur, ff. De iur. fisci, l. *in fraudem*, § *neque*. Hanc conclusionem non credo veram indistincte. Immo si de facto non possit artare civitas civem suum, etiam civem civitatis contra quam indicuntur represaliæ, optime contra eum exercebuntur represaliæ, nam propter defectum iurisdictionis indicuntur, ut supra pluries tactum est. Sed de iure non debet iurisdictio deficere, cum de iure omnes subiciantur Principi, ff. Ad leg. Rhod. de iact., l. *deprecatio* ; ix, q. iii, cap. *cuncta per mundum*, et cap. *per principalem*. Sed de facto deficit, quia de facto non recognoscunt. Sicut igitur de facto deficere potest cum non subditus iniuriatur, sic et de iure subditus de facto resistere potest, et sic recurri potest ad remedium extraordinarium. Fateor tamen quod subditum non artabunt, donec specialiter contra subditum processum fuerit iuris ordine servato, nec processus sortiri possit effectum propter facti rebellionem.

[Cap. cxxxvi.]

*An contra [milites] mulieres<sup>m</sup> exerceri possint represaliæ?*

Quarto quæritur, an in [milites] mulieres<sup>m</sup> Bononienses exerceri possint? Apparet quod sic, nam in eis habet locum postliminium, ut l. i, C. De [captivis] postliminio reversis. Contrarium est verum, nam in persona capi non possunt, C. De offic. eius qui vicem alic. iud. obtinet, Authent., *sed hodie*; et C. De execut. rei iudicatæ, Authent., *sed novo iure*. Et illa facultas, concessa a iure gentium, debet intelligi civiliter, ff. De servit., l. si cui.

[Cap. cxxxvii.]

*An contra clericos et alios, etiam clericos coniugatos, exerceri possint represaliæ?*

Quinto quæritur, an contra clericos Bononienses possint exerceri? Textus est quod non, in cap. uno, De iniur., Lib. VI. Quid de clericis coniugatis? De his dicendum est, ut cap. uno, De iniur., Lib. VI.

*An Episcopo, negligente facere iustitiam de clericis suis, cum haberi non potest ad superiorem recursus, quia Episcopus est schismaticus, possint indici represaliæ contra clericos eosdem per iudicem sæcularem?*

Sexto quæritur, an, si Episcopus negligat facere iustitiam de clericis suis, nec haberi potest recursus ad superiorem, quia Episcopus est schismaticus, an possint contra clericos indici represaliæ per iudicem sæcularem? Quidam in hoc dubitant. Nec est dubitandum, quia laicis nulla concessa est potestas contra clericum, qualitercunque delinquentem, ut cap. *contingit*, et cap. *in audientia*, De sent. excom.; et cap. *si iudex laicus*, eod. tit., Lib. VI. Poterunt ergo coerceri per superiorem suum, et poterit haberi recursus ad iudicem sæcularem per viam invocationis, ut cap. i, De offic. iud. ord.; xxiii, q. v, *regum*, et cap. *administratores*, et cap. *principes*.

[Cap. cxxxviii.]

*An contra Bononienses, vel alios studentes Bononiæ, euntes Paduam pro studio, exerceri possint represaliæ?*

Septimo quæritur, an contra Bononienses euntes Paduam pro studio possint exerceri, vel etiam studentes Bononiæ? Textus est quod non, in Authent., *habita*, C. Ne fil. pro patre; et hoc vindicat sibi locum, si studeant iura in locis privilegiatis, privilegio studii, secus autem si in aliis studeant iura, ut in procemio, ff. <sup>m</sup>, § *hæc autem tria*. In aliis autem facultatibus ubique doceri potest, ut l. si duas, § *cum autem* <sup>m</sup>, ff. De excusationibus. Et quod dictum est de scholaribus, idem dicas de scriptoribus, et de bedellis et accedentibus causa scholarium. Arguit l. i, ff. De milit. testam. militis; et l. una, De bon. poss.



ex testam. militis. Idem de patre et aliis agnatis qui irent ad videndum filium et agnatum in studio, ff. De iudiciis, l. ii, § *item*, in glossa super verbo "venerit."

*An contra ambasciatores indici possint represaliæ ?*

[Cap. cxxxix.]

Octavo quæritur, an contra Bononienses ambasciatores possint exerceri ? Solutio. Non poterunt, ut l. fin., De legation. ; ff. De iudic., l. ii, § *legatis*, et nota C. De iurisd. omn. iud. et de foro competenti, cap. finali.

*An contra euntes ad nundinas, ad Sanctum Iacobum, vel alias ad alium locum indulgentiæ. Item an contra navigantes, et an contra illos qui in ius vocari non possunt, et multis aliis casibus, exerceri possint represaliæ ?*

[Cap. cxli.]

Nono quæritur, an contra Bononienses euntes ad nundinas possint exerceri ? Textus est in l. una, C. De nundinis, quod non. An contra Bononienses euntes ad Sanctum Iacobum, vel aliam peregrinationem, possint exerceri ? Respondeo, non, ut De cleri. peregrin., per totum ; et cap. *si quis Romipetas*, xxiv, q. iii ; C. Communia de success., Authent., *omnes* ; ibi libere. Idem de euntibus ad locum indulgentiæ, propter tenendum hospitium, vel aliquid simile, in servitium accedentium pro indulgentia. An contra Bononiam navigantes, qui vi ventorum deferuntur ad civitatem indicentem, exerceri poterunt ? Respondeo, non, per Authent., *navigia*, C. De furtis. Ad idem, C. De naufragiis, l. i, [lib. xi]. An etiam contra illos qui in ius vocari non possunt poterunt exerceri, qui enumerantur in l. ii, ff. De in ius vocando ? Respondeo, non. Ratio. Nam si forent condemnati, non possent capi, multo minus pro delicto vel debito alterius, hoc fieri poterit. Ex quo infertur quod, si Bononiensis eligeretur in potestatem Mediolani, ibi non posset detineri vigore represaliarum. Idem si Bononiensis iret ad civitatem Mediolani propter funus consanguinei. Idem in similibus casibus, qui enumerantur in dicta leg. ii, ff. De in ius vocando.

*An contra Bononiensem potestatem, Mediolani ibi iniustitiam facientem, possint concedi represaliæ ?*

[Cap. cxli.]

Decimo quæritur, an contra Bononiensem potestatem, Mediolani ibi iniustitiam facientem, possint concedi represaliæ ? Iacobus de Belvisio, in Authent., Vt non fiant pignor., tenet quod sic, per l. i, ff. Quod quisque iuris. Alii distinguunt, an fecerit talem iniustitiam pro qua conveniri non possit officio durante, vel sit talis qui conveniri non possit, ut l. *pars literarum*, ff. De iudic. ; et l. *nec magistratus*, ff. De iniuriis ; et tunc non possunt indici. Finito autem officio, poterunt indici, prius requisito syndicatore, nec debet requiri iudex civitatis suæ, quia ibi non debet con-

veniri ratione talis commissi, C. Vbi de ratiociniis agi oportet, ll. i et ii; et C. Vt omnes tam civil. quam militares, l. i; et in Authent., Vt iudi. sine quoque suff., § *necessitatem*. Si autem tales sint qui conveniri possunt, tunc poterunt indici. Hanc solutionem non puto veram in hoc secundo membro, nam represaliæ indicuntur in defectum iurisdictionis deficientis. Si ergo durante officio conveniri possunt, et in loco commissi, ut in l. ii, C. Vbi de ratiociniis; et Vt omnes tam civil. quam militares, l. i; ad quid est opus represaliis? Nec puto veram in primo membro, ubi dicitur quod finito officio possunt indici, nam finito officio possunt conveniri, et iuris forma servari. Ergo non est opus hoc remedio. Fateor tamen quod utroque casu, ubi per viam iuris non posset arceri, recurrendum esset ad represalias, et hoc casu non est requirendus iudex civitatis propriæ, quia super hoc non potest ius facere per iura superius allegata.

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[Cap. cxlii.]      *An contra officiales potestatis, vel rectoris, iniustitiam facientis, indici possint represaliæ?*

Vndecimo quæritur, an contra officiales potestatis, vel rectoris, iniustitiam facientis, possint indici represaliæ? Iacobus de Belvisio tenet quod sic. Alii dicunt hoc verum, ubi officiales expresse iuraverunt<sup>(7)</sup> rectorem ad faciendam iniustitiam, ut C. De advoc. diver. iud., l. *per hanc*; C. De excus. milit., l. pæn., lib. x<sup>(8)</sup>. Si autem officiales expresse contradixerunt, non possunt contra tales indici, l. *quoniam*, C. De appellationibus. Si autem officiales nec consentiunt nec contradicunt, quia absentes vel ignorantes, tunc etiam non possunt, ut l. i, in princ., ff. De magistr. conveniendis. Si autem sint præsentis, nec consentiant nec contradicant, tunc si sint officiales deputati ad merum officium, qui non vocantur ad consilia, ut sunt notarii et socii et tabernarii, tunc etiam contra tales non poterunt indici, ff. De magistr. conveniendis, l. i. Et ratio. Quia non possunt resistere, ut C. Vt omnes tam civil. quam militares, l. i, § *officium*. Si autem sint officiales assumpti ad consulendum, contra illos poterunt indici.

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[Cap. cxliii.]      *An contra Consules, Priores, civitatis, iustitiam facere denegantes, indici possint represaliæ?*

Duodecimo quæritur, an contra Priores, Consules, civitatis, denegantes facere iustitiam, possint indici? Iacobus de Belvisio dicit quod sic. Alii dicunt hoc verum contra præsentis, secus tamen contra absentes, quia contra eos, ut Consules, indici non poterunt, ut l. i, in princip., ff. De magistr. conveniendis.

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[Cap. cxlii.]      *An contra singulares personas, penitus innocentes, propter delictum domini, vel alterius privati, de quo iustitia non fit, indici possint represaliæ?*

Tertiodecimo quæritur, an contra singulares personas possint indici, quæ sint penitus innocentes, propter delictum domini, vel alterius privati, de quo



non fit iustitia ? Iacobus de Belvisio dicit quod non, quia non debet quis gravari pro delicto alterius, Regula *non debet*, De reg. iuris., Lib. VI. Alii contra, per cap. *dominus*, xxiii, q. ii. Nam sententia interdicti puniuntur singuli, etiam innocentes, ut cap. *si sententia*, De sent. excom., Lib. VI. Etiam in bello iusto capiuntur innocentes, sed represaliæ sunt quoddam bellum particulare, etiam licet captus sit innocens, tamen civitas habet ius in eum, et hoc videtur servari.

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*An contra homines subditos, quoad quid, uni civitati, non autem plene, possint  
indici represaliæ ?* [Cap. cxlv.]

Quartodecimo quæritur, an contra homines subditos, quoad quid, civitati Bononiæ, non autem plene, indici possint represaliæ ? Solutio. Si sint civitates vel universitates simpliciter suppositæ civitati Bononiæ, sed ex pacto habent aliquas exceptiones vel iurisdictiones, contra istas indici non poterunt, quia non sunt subditæ quæ sunt liberæ, sed quoad quædam se subiecerunt. Et contra istas, propter delictum domini habentis eas subiectas, non indicentur represaliæ, quia sunt liberæ, ut l. *non dubito*, ff. De captivis ; sed propter delictum dictarum civitatum, indici poterunt represaliæ, sicut et bellum licitum fieri poterit.

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*An contra certum genus hominum, facere iustitiam denegantium, indici  
possint represaliæ ?* [Cap. cxlvi.]

Quintodecimo quæritur, an contra certum genus hominum, iustitiam facere denegantium, represaliæ possint indici ? et dicendum quod sic, servata forma.

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*De materia ex qua.* [Cap. cxlvii.]

Restat videre de causa materiali ex qua insurgunt represaliæ. Et est defectus iurisdictionis. Nam primo debet requiri iudex, qui si negligat, nec haberi potest recursus ad superiorem, tunc concedi possunt. Sed circa hoc quæri potest de pluribus.

*An requiri debeat iudex ut iustitiam faciat, antequam represaliæ concedantur ?* [Cap. cxlviii.]

Et primo quæritur, quis debeat requirere iudicem ut iustitiam faciat ? Solutio. Pars iniuriam passa, et iudice negligente, debet adire Rectorem civitatis propriæ, et facere fidem de requisitione et neglectu, et petere ut iterato requirat ut iustitiam faciat, et tunc, eo negligente, poterunt indici. Quod autem requiratur partis requisitio probatur in Authent., Vt differ. iudices, in princip., coll. iii.

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[Cap. cxlii.] *An iudex iniuriam passi, qui non audet litigare in civitate iniuriam inferentis, possit scribere, ut in alios iurisdictionem proroget, vel arbitros eligat?*

Secundo quæritur, an, si pars dubitaret litigare in civitate iniuriam inferentis, propter eius potentiam, an iudex suus possit scribere ut in alios proroget iurisdictionem, vel eligat arbitros iure civili pro certis personis, utpote miserabilibus? Hoc clarum quod sic, ut l. i, in fine, C. Quando Imperator inter pup. vel viduas. Iure canonico hodie latius permissum est per cap. *statutum*, § *cum vero*, De rescriptis, Lib. VI, quoad articulum impetrationis.

[Cap. cli.]

*Quis iudex requiri debeat ut iustitiam faciat?*

Tertio quæritur, quis iudex requiri debeat ut iustitiam faciat? Solutio. Primo debet requiri iudex civitatis iniurantis, et tunc, si negligit iustitiam facere, adibit proximum superiorem, quo deficiente, adibit Principem, in Authent., Vt differ. iudic., in principio. Quibus omnibus deficientibus indicentur represaliæ per civitatem propriam, quæ succedit in locum deficientis iurisdictionis. Si autem non negligit, sed iniustitiam facit, pronuntiando inique, tunc si civitas habeat iudicem appellationis deputatum ad ipsum, per appellationem adibitur, et si non habeat, indicentur represaliæ. Nam est quid imputari civitati quæ non deputavit iudicem appellationis. Sin autem duo iudices appellationum iniustitiam fecerint, tunc videtur pars destituta omni subsidio, cum non liceat tertio appellari, nec videntur posse indici represaliæ, cum non defecerit iurdictio. Sed dici potest quod, si ob gratiam partis inique pronuntiaverunt, tunc peti poterit restitutio, ut l. *præfecti prætorio*, ff. De minoribus. Si autem ob gratiam illorum qui regunt, tunc parti tenerentur ad interesse, ut C. Ne liceat potent., l. i; et De his qui potent., l. i; et sic ad interesse tenentur actione in factum, ff. Pro socio, l. *nec quidquam*. Si autem inique lata sit ex solo iudicis motu, tunc est destituta omni subsidio, ut supra deductum est.

[Cap. clii.]

*Qualis iniustitia requiratur, ut represaliæ concedantur?*

Quarto quæritur, qualis iniustitia requiritur ut represaliæ indicantur? Solutio. Pro modico non indicuntur, cum hoc sit remedium extraordinarium, quod non datur pro modico, ut l. *scio*, ff. De in integr. restit.; et l. *si oleum*, ff. De dolo. Requiritur etiam quod totaliter sit ius læsum. Secus, si partialiter, ut l. *quotiens*, C. De preci. Imperat. offerendis. Nam totaliter iustitiam non facit, C. De servis fugit., l. *mancipia*; et l. iv, § *in eum*, ff. De damn. infecto.

[Cap. clii.]

*Quando dicatur non posse haberi copia superioris, ut sit locus represaliis?*

Quinto quæritur, quando dicatur non posse haberi copia superioris, ut sit locus indictioni represaliarum? Solutio. Vbi non potest haberi de iure, nec de facto, tunc est opus represaliis, ut cap. *dominus*, xxiii, q. ii; et l. *nullus*,



C. De Iudæis. Si autem de iure haberi potest, non tamen de facto, quia non obediunt, tunc idem. Si autem haberi potest de facto, non de iure, ut quia tyrannus occupavit, tunc dic ut notat Innocentius in cap. *nihil*, De electione. Si autem haberi potest de iure, sed difficile est haberi de facto, utpote Imperator cum sit valde distans, et pars est pauperrima, tunc etiam locus est represaliis, ff. De pig. act., l. *si servos*; ff. De divers. [et] temp. præscriptionibus.

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*De causa formali.*

[Cap. cliii.]

Restat videre de causa formali, et hæc est duplex, nam est forma indicendarum, et est forma exercendarum. Forma autem indicendarum implicat formam defensionis illius contra quem indicuntur, et circa hoc etiam de pluribus quæritur.

*Quo iure represaliæ concedantur ?*

Et primo quæritur, quo iure concedantur. Hic dicunt aliqui quod concedantur per illos qui non recognoscunt superiorem. Ab illis hoc peti non debet iure actionis, nec per officium, sed debet requiri manus regia, per quam omnia expediebantur, ut l. ii, ff. De orig. iuris. Solum enim illud requiritur quod ius gentium requirebat, scilicet, quod causa propter quam conceduntur sit vera, salvis tamen defensionibus illi contra quem, cum hoc sit iuris naturalis, ut in Clem., *pastoralis*, § *ceterum*, De re iudicata; et habenti represalias sufficit ostendere concessionem sine alio processu. Et recte præsumuntur cetera agitata, nam instar est sacrilegii disputare de iudicio Principis, ut l. *disputare* [*sacrilegii*], C. De crimine sacrilegii. Et hæc vera in territorio concedentis, verum quia gens contra quam conceduntur uti posset eodem iure, per titulum Quod quisque iuris. Et finaliter ex pacto de hoc deberet<sup>o</sup> cognoscere, ut puta arbitri, vel alii. Incumberet onus probandi illi cui sunt concessæ servata fore ea quæ iure gentium requiruntur. Ideo tutius est quod fiat processus, et in scriptis redigatur. Et hoc tenet Archidiaconus in cap. unico, De iniuriis, Lib. VI. Nam tenet quod præcedere debet monitio et sententia super neglectu, et ita sentit Guido, Concordensis episcopus. Si autem represaliæ petuntur ab illis quibus hoc concessum est a statutis, tunc si statutum tradit ordinem, ille debet servari. Si autem nullum tradit ordinem, tunc, quia facultas concedendi represalias procedit a iure civili, cum statuta sint ius civile, ut l. *omnes populi*, ff. De iustit. et iure; tunc debet implorari officium officialis, libellus porrigi, pars citari, et procedi ut disponunt iura.

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*Quis comparere possit ad impediendum ne represaliæ indicantur ?*

[Cap. cliiv.]

Secundo quæritur, quis comparere possit ad impediendum ne indicantur ? Solutio. Quilibet cuius interest, De testib., cap. *veniens*; De re iudi., cap. *cum super*. Interest autem populi contra quem indicuntur, sic ut, habens manda-

tum, admittetur, et quilibet de populo sine mandato admittetur, quia cuiuslibet interest, ff. De novi oper. nunt., l. *in provinciali*, § fin. Admittentur etiam illi qui sunt de populo indicentis, quia interest ne iniuste indicantur, ne eodem iure utantur contra eos, ff. Quod quisque iuris, in rubro, et per totum nigrum.

[Cap. clv.]

*Quæ defensæ competunt illi contra quem indicuntur ?*

Tertio quæritur, quæ defensæ competunt illi contra quem petuntur ? Solutio. Competit exceptio, quod petens non habet ius petendi, vel ratione personæ, vel iuris incompetentis, vel quod paratus est emendare, ut cap. *Dominus Noster*, xxiii, q. ii. An possit pacto renuntiari huic iuri ? Ecce eligitur Rector civitatis Bononiæ qui iurat non petere represalias contra civitatem, numquid obstat exceptio renuntiationis ? Solutio. Si passus est iniuriam propter iniquam condemnationem, tunc, quasi in modum appellationis, recurritur ad iudicem proprium, in locum deficientis iurisdictionis, sed sic renuntiari potest appellationi, ut l. ult., C. De temp. appellationum. Si autem passus sit iniuriam, tunc pactum nullum operatur effectum, quia remitteretur dolus futurus, ut l. *si unus*, § *illud*, ff. De pactis ; et l. *convenire*, ff. De pact. dotalibus.

[Cap. clvi.]

*Qualiter constabit de iniustitia facta, vel ea denegata ?*

Quarto quæritur, qualiter constabit de iniustitia facta, vel ea denegata ? Solutio. Per acta primi iudicis, vel per testes, et requiri potest primus iudex, ut faciat copiam actorum, et si non faciat, hoc est iniustitiam facere, ut l. ii, C. Vt lite pendente.

[Cap. clvii.]

*An, si aliqua capiantur vigore represaliarum, detineri valeant, ut ex primo decreto, an secundo ?*

Quinto quæritur, an, si aliqua capiantur vigore represaliarum, detineri valeant ut ex primo decreto, an ex secundo. Solutio. Si indictæ sunt represaliæ, parte citata et comparente, et lata fuerit super hoc sententia, tunc ea detinentur ex causa iudicati, ut ff. De re iudic., l. *a divo Pio*. Si autem non compareat, tunc primo dabitur licentia, ut capiat ex primo decreto, ut affectus tædio veniat, et si contumax perseveraverit, tunc dabitur licentia detinendi ex secundo decreto.

[Cap. clviii.]

*De forma exercendi represalias.*

Restat videre de forma exercendi represalias indictas, et circa hoc quæritur de pluribus.



*An liceat illi cui sunt concessæ represaliæ, auctoritate propria, vel per ministros concedentis, capere homines contra quos indicuntur?*

Et primo quæritur, an liceat illi cui sunt concessæ represaliæ auctoritate propria, vel per ministros capere homines contra quos indicuntur? Solutio. Iacobus de Belvisio tenet quod non licet auctoritate propria capere personas nec res, sed iudiciaria, ut l. *miles*, ff. De re iudicata. Supplet quidam hoc verum, si potest haberi copia iudicis, alias auctoritate propria licebit, ff. Quæ in fraud. cred., l. *ait prætor, § si debitorem*; C. De decur., l. *generali*. Et hoc puto verum. Ponderari tamen debet modus facultatis concessæ, et ille servandus, De rescriptis, *cum dilecta*; et l. *diligenter*, ff. Mandati.

*An personas et res captas teneatur capiens præsentare iudici, vel sibi retinere?* [Cap. clx.]

Secundo quæritur, an personas captas et res teneatur capiens præsentare iudici, an possit retinere sibi? Solutio. Iacobus de Belvisio tenet quod teneatur præsentare iudici, per l. *non est singulis*, ff. De regul. iuris; ne fiant illicitæ exactiones, ut l. *illicitas*, ff. De offic. præsidis. Alii dicunt hoc procedere in personis captis, quæ debent ad iudicem duci, ut l. *generali*, C. De decur.; et coll. x<sup>o</sup>, De pace iuramento firmata. Res autem capientur ex causa iudicati, vel ex primo vel ex secundo decreto, ut supra tactum est, et remanebunt penes capientem, ut l. *is cuius, § qui legatorum*, ff. Vt in poss. legatorum. Et pro hoc non est plus necesse ire ad iudicem, nam sufficit prima concessio. In his omnibus puto ponderandam formam concessionis.

*An res captæ vigore represaliarum vendantur, et qualiter, vel in solutum accipiantur, vel æstimentur?* [Cap. clxi.]

Tertio quæritur, an et qualiter res captæ vigore represaliarum vendantur, vel in solutum accipiantur, vel æstimentur? Solutio. Dicunt quidam quod iudicis auctoritate venduntur, ut l. *miles, § ii*, ff. De re iudicata. Æstimatio fiet per iudicem, ut l. *ii*, C. De iure dot.; impetrandum, et in computatione fiet deductio impensarum, ff. Ad leg. Falc., l. *in quantitate*; et l. *sci-mus, § in computatione*, C. De iure deliberandi. Et in his etiam puto attendendam formam concessionis, ut supra.

*An diebus feriatis indictæ represaliæ exerceri possint?* [Cap. clxi.]

Quarto quæritur, an diebus feriatis indictæ represaliæ exerceri possint? Solutio. In diebus feriatis propter hominum necessitatem, exerceri possunt, sicut executiones sententiarum, ut c. ult., De iudiciis. Si autem sunt feriat ob reverentiam Dei, tunc dicunt aliqui hoc fieri posse in casu, ne contingat depe-

rire totam concessionem, ut puta si illi contra quos conceduntur sint <sup>(1)</sup>, et non veniant nisi diebus feriatis. Allegant l. i et l. ii, ff. De fer.; et l. ii, C. eod. titulo. Alias non, per l. *dies*, C. De feriis. Hanc conclusionem non credo veram in hoc secundo membro. Nam capta occasione represaliarum capiuntur aut ex primo, aut ex secundo, decreto, aut causa iudicati, ut supra deductum est. Et hæc omnia inhibentur tempore sic feriato, ut l. *dies*, statim allegata. Etiam lex ponit specialiter, in feriis inductis propter hominum necessitatem, ut in casibus illis procedi possit illis diebus, ut ll. i et ii, ff. De feriis. In feriis autem inductis propter reverentiam Dei, nihil excipitur, ergo standum regulæ.

[Cap. clxii.]

*Si quis se, vel res captas, vigore represaliarum velit defendere, qualis cognitio adhibeatur?*

Quinto quæritur, si quis vult se defendere, vel res captas, vigore represaliarum, qualis cognitio adhibeatur? Solutio. Dicunt quidam quod, si facta est plena executio, ut quia res venditæ vel in solutum datæ, tunc est opus ordinaria cognitione, nec audietur officium implorans, ut l. *a divo Pio*, § *si post addictum*, ff. De re iudicata. Si autem non sit executio plene facta, sed pendet, tunc potest officium iudicis implorare, per quod fiet editio actorum, vigore quorum indictæ sunt represaliæ, et poterit opponere defectum iuris illius cui sunt concessæ, et inhabilitatem personæ, et alia, de quibus supra tactum est. Allegant l. ii, C. De edendo; et l. ii, C. Vt lite pendente; et l. i, ff. De edendo. Et fiet super hoc summaria cognitio. Hanc conclusionem non credo veram in hoc secundo membro. Nam si sint indictæ represaliæ, parte citata, et comparente, et in iudicio persistente, tunc clarum quod dicta conclusio non procedit, quia illæ exceptiones veniebant proponendæ a principio, nec opponi possunt post sententiam, ut l. *peremptorias*, C. Sent. rescindi non posse; et l. *si quidem*, C. De except.; et cap. *pastoralis*, eod. tit., Extra. Si autem indictæ sunt, parte per contumaciam absente, ex primo vel secundo decreto, ut lapsus anni in reali, tunc idem, quia non audietur nisi per viam ordinariam, ut l. *si finita*, § *si plures*, ff. De damn. infecto; et l. *consentaneum*, C. Quomodo et quando iudex, et ibi nota; et cap. *contingit*, De dolo et contumacia. In primo autem decreto procedere posset.

[Cap. clxiii.]

*De remediis exacti.*

Huic membro adiungitur de remediis exacti. Et circa hoc de pluribus quæritur.

*An exacto competat regressus contra illum propter cuius debitum vel delictum exactus est?*

Et primo quæritur, an exacto competat regressus contra illum propter cuius delictum vel debitum? Iacobus de Arena tenet in l. ii, ff. De verb. oblig., quod ei succurritur contra illum propter cuius indictæ sunt represaliæ,



per l. *nam et Servius*, De neg. gest. ; ff. Nautæ caup. stabul., l. *licet*, § fin. ; ff. De his qui deiec. vel effus., l. *si vero*, § *cum autem*. Alii dicunt contra, per glossam l. *si quis dolo*, § i, ff. De reg. iuris. Nam iste non est exactus propter illum privatum, immo propter iudicem, qui iustitiam denegavit, vel iniustitiam fecit. Dicunt ergo quod aut est exactus iudex quia fecit iniustitiam, et tunc iudici non succurritur, ut dicta l. *si quis dolo*, aut est exactus iudex, quia neglexit iustitiam, et tunc succurritur contra illum de quo requirebatur iustitia, ut C. De exact. trib., l. *missi*, in fine lib. x. Aut exactus est tertius de populo, et tunc procedit opinio Iacobi, ut l. *licet*, in fine, ff. Nautæ caup. stabul., etc.

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*An exacto succurratur contra Rectorem, sicut contra debitorem principalem ?* [Cap. clxiv.]

Secundo subsequenter quæritur, an exacto succurratur contra Rectorem, sicut contra debitorem principalem, ut supra dictum est? Solutio. Primo conveniendus est debitor principalis, et si non est solvendo, tunc Rector, cum ipse etiam debitor fiat, iustitiam denegando. Quod hic ordo sit servandus probatur ff. De magistr. conven., l. i, in princip. ; et C. De conven. fisci debitoribus, l. *quoniam*. Vltimo pervenitur ad officiales, qui, cum possent compellere Rectorem ad iustitiam, neglexerunt, ff. De tut. et rati. distrahendis, l. i, § *nunc tractemus*.

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*An captus vigore represaliarum possit auctoritate propria homines illius civitatis capere in qua fuit captus ?* [Cap. clxv.]

Tertio quæritur, an captus vigore represaliarum possit auctoritate propria homines illius civitatis capere in qua captus fuit. Et videtur quod sic, per totum titulum, ff. Quod quisque iuris. Contrarium est verum, nam titulus, Quod quisque iuris, vindicat sibi locum in iuris executione, ut si una civitas indixit represalias iniuste contra aliam, hoc idem licet alii contra primam. Non autem loquitur in executione facti, ut, si spoliavi te, liceat tibi spoliare me, quia sic permetteretur vindicta. Contra id, ff. Ad leg. Aquil., l. *scientiam*, § *qui cum aliter*. Recurrat ergo ad civitatem suam, et petat represalias contra illam civitatem in qua captus fuit.

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*An per statuta represaliæ concedi possint, in casibus alias iure communi non permissis ?* [Cap. clxvi.]

Quarto quæritur, an per statuta represaliæ concedi possint, in casibus alias non permissis iure communi? Solutio. Civitas contra terras plene subditas concedere potest, etiam in casibus non permissis lege communi, sed in terras liberas, vel etiam confœderatas, de quibus loquitur, l. *non dubito*, ff. De captivis, non potest. Ratio. Nam in concessione represaliarum, vertitur in causæ cognitione de iniustitia facta, vel iustitia denegata, et in hoc una

civitas non potest statuere contra aliam, quia "par in parem," etc. Secundo vertitur, an haberi possit copia superioris denegantis iustitiam facere. Et de hoc nihil potest una civitas contra aliam statuere. Nam non posset statuere quod indicantur represaliæ, non requisito superiore denegantis iustitiam. Nam hoc esset tollere iurisdictionem superioris, De iureiurando, *venientes*. Tertio requiritur auctoritas superioris indicentis, et ipsa non recognoscens superiorem est illa cuius auctoritas requiritur, et de hoc statuere potest civitas quod ea non requisita, et quod unus pro debito alterius capiatur, C. De omni agro deserto, l. i, lib. xi; sicut statuitur in casibus quod uxor pro debito viri teneatur, C. In quibus [modis] causis pign. contrahitur, l. *satis*; et filius pro patre, ut C. De primipilo, l. fin., lib. xii.

*An statutum civitatis, quo cavetur quod filius teneatur pro patre delinquente, possit exerceri contra filium existentem extra territorium civitatis concedentis?*

Quinto quæritur, an statutum civitatis, quo cavetur quod filius teneatur pro patre delinquente, possit exerceri contra filium existentem extra territorium civitatis concedentis. Solutio. Aut filius erat natus tempore delicti commissi a patre, et tunc aut quæritur, numquid fieri possit executio statuti contra filium alibi existentem. Et non potest, ut l. *a divo Pio*, § pænult., ff. De re iudicata; et l. *cum unus*, § [cum is] *is qui*, ff. De rebus auctor. iudi. possidendis. Aut quæritur, numquid conditione ex illo statuto agi possit contra eum. Et potest, quia actio ipsum sequitur cui competit, C. De longi tempor. præscriptione, l. finali. Hæc vera, nisi filius ante delictum commissum contraxisset alibi domicilium, vel inde foret ratione antiquæ originis, quia tunc illa civitas, ut præveniens, posset illum defendere ab illo statuto. Si autem filius natus sit post commissum delictum, tunc non agetur contra illum. Nam statutum intelligitur de filiis tunc habitis, ff. De noxal., l. *in delictis*, § *si extraneus*; ff. De milit. testamento, l. [si] *Titius*. Idem dico si statutum habet quod unus de villa teneatur pro delicto alterius. Effectus de novo homo illius, non tenetur pro debitis antiquis, ut C. De decur., l. *providendum*; et nota Dinum in l. *incola*, ff. Ad municipalem.

[Cap. cxvii]

*An per pactum licite fieri possit ut unus pro alio teneatur?*

Sexto quæritur, an per pactum possit fieri licite ut unus teneatur pro alio? Solutio. Per pactum privatorum expressum, non; in Authent., Vt non fiant pignorationes. Etiam si paciscatur quod exigatur alius in quo habet ius, ut C. Ne filius pro patre, per totum. Et licet hoc non possit dominus, iudex tamen domini poterit facere capi homines sic conditionatos.



*De Bello Particulari quod fit ad purgationem, quod " Duellum " nuncupatur.* [Cap. clxviii.]

Restat nunc videre de Duello, in cuius tractatu, primo quæram quid sit Duellum? Secundo, quot sint species Duelli? Tertio, quo iure sit permissum, et quo inhibitum? Quarto, propter quid sit permissum, et propter quid inhibitum? Quinto, pro quibus causis licitum sit duellum? Sexto, inter quos sit licitum? Septimo, qualiter duellandum?

*Quid sit duellum?*

[Cap. clxix.]

Circa primum dico quod Duellum est pugna corporalis deliberata hinc inde duorum, ad purgationem, gloriam, vel odii exaggerationem. Dixi " pugna." Hoc ponitur ut genus. Dixi " deliberata hinc inde." Hoc ponitur ad differentiam pugnae quæ fit ad necessariam defensam sui, de qua in l. *ut vim*, ff. De iustit. et iure; et l. i, C. Vnde vi; et l. i, § *vim vi*, ff. De vi et vi arm.; et l. *scientiam*, § *qui cum aliter*, ff. Ad leg. Aquil.; et cap. *olim*, i, De restit. spoliat.; et Clemen., si *furiosus*, De homicidio. Nam in pugna illa non est deliberatio ex parte aggressi regulariter, sed ex parte aggredientis tantum, vel neutrius, ut probatur in dicta Clemen., si *furiosus*. In Duello autem est utriusque deliberatio. Dixi " duorum," quia tunc proprie Duellum nuncupatur, adhærendo etymologiæ vocabuli, Instit., De donat., § *est et aliud*; xvi, q. i, si *cupis*; xxi dist., *cleros*; De præbend., cum *secundum*. " Pugna duorum," ad differentiam contractuum qui inter duos celebrantur, ex mutuo partium consensu, ut Instit., De obligationibus, cum rescriptis sequentibus. Et dixi " corporalis," ad differentiam pugnae iudiciariæ, quæ fit etiam inter duos, utpote actorem et reum, ut l. *rem non novam*, § *patroni*, C. De iudic., et l. *properandum*, eod. tit.; et cap. *forus*, De verbor. significatione. Nam ibi non contenditur viribus corporis, sed iuribus, ut iuribus statim allegatis. Dixi " ad purgationem, gloriam, vel odii exaggerationem." Nam per hoc tangitur finis, et eliciuntur species Duelli, ut infra sequitur. Concluditur igitur descriptio Duelli in genere, per supra dicta.

*Quot sint species Duelli?*

[Cap. clxx.]

Circa secundum est advertendum quod Duellum, ut supra describitur, sumitur generaliter, et, ut tetigi in fine descriptionis, species Duelli eliciuntur per verba posita in fine, nam tres sunt species Duelli. Fit enim Duellum aut propter odii exaggerationem, aut propter gloriam in publico consequendam, ex viribus corporis, aut propter purgationem alicuius criminis iniuncti.

*Qualiter duellum fit propter odii exaggerationem?*

Propter igitur odii exaggerationem fit, cum aliqui solo odio originaliter naturali, et naturalitate singulari, quæ apud naturales " forma specifica " appellatur, inducuntur ad se invicem exterminandos. Et de hoc Duello non

reperio aliquid iure cautum, sed ex principiis naturalibus hoc evenit, ut statim prosequar, et quia sensuali experientia hoc est comprobatum.

*Qualiter duellum fit propter gloriam in publico consequendam?*

Fit et, secundo, propter gloriam in publico consequendam, ut in publicis spectaculis, cum duo vires corporeas variis modis experiuntur. Et de hoc reperio iure cautum, et civili et canonico. Lege civili, ut l. *hac actione*, § *si quis in colluctatione*, ff. Ad leg. Aquil.; et l. *una*, C. De glad. toll., lib. xi; [C.] ff. De re iudic., l. *commodis*; ff. De his qui not. infam., l. *athletæ*; C. De athleticis, l. *i*; C. Quæ res pign. obl. poss., l. *spem*; ff. De donat., l. *donationes*. Nota glo. Instit., De hæredit. quæ intest. defer., § *interdum*. Lege canonica, De clericis pugnantis in duello. Licet etiam ibi fiat propter purgationem, De torneam., per totum. Licet non sit proprie Duellum, sed pancratium, ut l. *hac actione*, § *si quis in colluctatione*, ff. Ad leg. Aquiliam.

*Qualiter duellum fit propter purgationem alicuius criminis iniuncti?*

Fit et tertio, propter purgationem, scilicet, cum aliquod crimen alicui imponitur, et ad probationem provocans, forte carens aliis probationibus, vel etiam non carens, offert se probaturum viribus corporeis, duello suscepto, et provocatus sic se purgat. Et de hoc habetur etiam iure cautum, De cler. pugn. in duello, ut supra allegavi; De purga. vulgari, per totum; ii, q. v, quasi per totam illam quæstionem; et in Lombarda, ut ibi prosequar, cum illud membrum discutiam.

[Cap. cxxi.]

*Quo iure sit permissum, et quo inhibitum, Duellum?*

Circa tertium, videlicet, quo iure sit introductum duellum? Expedit singulas species duelli supra positas explicare, declarando circa singulas quo iure inducantur, et quo inhibeantur. Et primo de duello proveniente propter odii naturalis exaggerationem, ubi sciendum quod hoc duellum introductum est iure naturali, ut sumitur ius naturale pro instinctu naturæ, proveniente ex sensualitate ad aliquid appetendum, ut sumitur in secundo suo significato, ut notat glossa, i dist., *ius naturale*; et l. *i*, § *ius autem naturale*, ff. De iustit. et iure. Et ipsum duellum est inhibitum iure naturali, ut sumitur ius naturale pro instinctu naturæ, proveniente ex rationabili intelligentia, quæ appellatur naturalis æquitas. Et est tertius modus iuris naturalis, ut dicto canone, *ius naturale*. Est etiam inhibitum iure naturali, continente præcepta moralia legis divinæ, ut sumitur quarto modo, ut canone statim allegato. Est etiam inhibitum hoc duellum iure positivo, scilicet, canonico et civili. Expedit enim singula demonstrare.



*Qualiter duellum quod fit propter odii exaggerationem sit introductum iure naturali, sumpto pro instinctu naturæ, proveniente ex sensualitate ad aliquid appetendum?*

Dixi quod hoc duellum est introductum iure naturali, ut sumitur pro instinctu naturæ, proveniente ex sensualitate ad aliquid appetendum. Hoc sic demonstratur. Quidquid est productivum causæ immediatæ alicuius effectus, per consequens est productivum illius effectus. Sed istud ius naturale, originaliter inclinans ad sic appetendum, est causa inductiva huius sensualis appetitus ad duellandum. Ergo est causa duelli inductiva. Probatur maior. Nam imprimens sufficienter in causam causæ productivæ sic remote, imprimit in effectum, ff. Ad leg. Corn. de sicar., l. *nihil*; C. eod. tit., l. *si quis necandi*; i di., *studeat*; et can. *si quis viduam*; De homicidio, *de cetero*, et cap. *presbyterum*. Probatur minor. Nam ex naturali dispositione, proveniente a principiis naturalibus, et superioribus et inferioribus, provenit in hominibus varia appetitus inclinatio. Nam circumscripto quolibet merito, vel demerito, tibi naturaliter placebit quod mihi displicet, et econtra, et ex naturali dispositione quis, circumscripto accidentali quocunque, diligit et odit. Quilibet hoc experiri potest in seipso. Sed causa huius est prompta, attentis corporibus cœlestibus. Nam, si aliqui, tempore natalium in momento natalium, habeant uniformem correspondentiam configurationis cœlestis, et principia paterna conforment in complexionibus, procul dubio sunt amicissimi naturaliter. Sic si repugnantes, hinc inde sunt inimicissimi. Nam ab uniformi causa debet insurgere uniformis effectus, C. Ad leg. Falc., l. ult.; ff. Ad leg. Aquil., l. *illud*; ff. De fonte, l. i; De constit., *translato*; et cap. *inter corporalia*, De translat. [prælatorum] episcoporum. Et tamen est hic attendendum quod hæc inimicitia naturalis inter hominem et hominem, ut prædixi, provenit ex singulari naturali dispositione, quæ "forma specifica" apud naturales nuncupatur. Nam, attenta naturali dispositione speciei humanæ, inter homines debet esse amicitia, propter uniformitatem complexionis relatæ ad formam humanam, et propter ea dicunt iura quod inter hominem et hominem est officium humanitatis, hinc inde impendendum, ut l. *si servus*, in fine, ff. De servis expor.; et l. *officio*, C. De neg. gest., et ibi glossa. Et sic non insurgit hoc ex naturali dispositione speciei, quia hoc naturaliter non est reperire, si quis recurat per species singulas animalium. Nam inter singulas species brutorum est quoddam fœdus coniunctionis et cohabitationis; propter uniformitatem complexionis relatæ ad formam specificam. Sed inter speciem et speciem quandoque est extremum repugnantia, inductorium ad alterius exterminationem, ut est in accipitre et avibus aucupabilibus, murilega et muribus, canibus et leporibus. Et sic de singulis. Provenit igitur hoc ex quadam repugnantia individuali dispositione principiorum superiorum et inferiorum. Effectum quilibet in se experitur. Illa tamen dispositio non inducit regulariter immediate duellum, sed per medios actus ad quos propere proveniunt, sed tamen credo quod tanta posset esse repugnantia individualis

dispositionis, quod subito ad id provenirent. Et hoc provenit cum reguntur sola sensualitate, et nullo rationis vibramine. Ex his apparet conclusum qualiter hoc duellum introductum est iure naturæ, sic sumpto.

[Cap. cxxii.]

*Qualiter duellum, quod fit propter odii exaggerationem, sit inhibitum iure naturali, sumpto pro rationabili intelligentia, et iure divino, canonico, et civili.*

Restat videre quod dicebam secundo circa hoc membrum. Dicebam enim, quod hoc erat inhibitum iure naturali, sumpto pro rationabili intelligentia, et sic iure gentium et iure naturali, prout continet præcepta moralia legis divinæ, et iure canonico, et civili. Hoc luce clarius demonstrari potest, incipiendo a lege divina. Nam hoc est unum de præceptis decalogi, "non occides," et sic lege divina inhibitum, et hoc est regulare præceptum. Et si detur instantia de Iephte, qui occidit filiam, nec tamen peccavit, lege divina, Iudicum [v] xi cap. ; xxii, q. iv, *unusquisque* ; xxiii, q. v, *si non licet* ; et de Samson, qui multos et se occidit, Iudicum xvi cap. ; xxiii, q. v, *si non licet* ; non obstat, quia hæc facta fuerunt Spiritus Sancti inductione, ut scribit Augustinus in libro primo De civitate Dei. Transumptive habetur in cap. *si non licet*, xxiii, q. v. Sic igitur lege divina inhibitum est per illud præceptum "non occides," Deuteronomii v capitulo. Est etiam inhibitum lege canonica, De homicid. voluntario ; l distinc. <sup>o</sup>, quasi per totum ; xxiii, q. v, *si non licet*. Est etiam inhibitum iure civili, ff. Ad leg. Corn. de sicar. ; et C. eod., per totum. Et si dicas illa iura inhibent homicidium voluntarium, et sic hoc genus duelli, ex quo illud provenit, sed homicidium proveniens a duello, introducto ex naturali dispositione, non est voluntarium, ex quo naturaliter est introductum, ergo illa iura non astringunt hunc casum. Solutio est prompta. Nam, licet naturalis dispositio corporea hoc introducat, tamen naturalis intelligentiæ dictamen disponit in contrarium. Cui obtemperandum est, nam illa naturalis dispositio non necessitat, immo manet liberum arbitrium, xxiii, q. iv, *De Tyriis* ; et cap. *Nabuchodonosor* ; et cap. *sicut enim*, De Pœnit., dist. ii ; et Philosophus, iii Ethicorum. Immo et astrologi, hoc efficacius demonstrantes, hoc idem asserunt. Vnde inquit Ptolemæus, in Centiloquio, in verbo decimo, "anima sapiens dominatur astris." Sic igitur, licet dispositio corporea proveniat a naturali principio, tamen naturalis intelligentia manet, et in contrarium disponit. Sic dici posset de singulis generibus vitiorum moralium. Nam naturaliter singuli homines ad singula inclinantur vitia, ut quidam superbi, quidam luxuriosi, quidam avari, et sic de singulis. Nec tamen excusantur, quia precise non necessitantur, ut cap. *Nabuchodonosor*, xxiii, q. iv. Hinc est quod dicit Philosophus, iii De anima, tractatu de motu, quod inter appetitum sensitivum et intellectualem est quandoque repugnantia. Nam sensitivus tendit in unum, intellectivus in alium, et, si intellectus vincat sensum, motus est rationabilis et naturalis, sicut si sphaera superior moveat inferiorem. Si autem econtra fiat, motus est contra naturam, ac



si sphæra inferior moveat superiorem, licet enim motus sensus proveniat a natura, inclinando in vitium, tamen fit contra naturam, nisi obtemperet sensus intellectui, ut subditus domino suo, ut idem Philosophus, primo Politicorum. Est etiam hoc genus duelli inhibitum iure naturali, ut sumitur pro naturali intelligentia, quod idem est quod ius gentium. Hoc probatur sic. Nam ex naturali intelligentia insurgit communis et naturalis æquitas, disponens in conservationem Vniversi, et inde habuit ortum ius positivum, immo, ut verius loquar, sunt ipsamet æquitas iuris naturalis, aliquo addito vel detracto, ut l. *ius civile*, ff. De iustit. et iure. Cum igitur hæc naturalis æquitas tendat in conservationem Vniversi, ergo reprobatur hominis exterminationem, quæ est tendens ad mundi destructionem; et dico de exterminatione tendente ad mundi destructionem. Nam quædam, quorundam hominum, exterminationes tendunt ad mundi conservationem, ut puta cum mali exterminantur. Nam propter hoc interest reipublicæ, ut puniantur, ut ff. De publ. et vecti., l. *licitatio*; ff. Ad leg. Aquil., l. *ita vulneratus*, in fine; ff. De fideiuss., l. *si a reo*; De sent. excom., ut *famæ*. Ex his aperte concluditur qualiter hoc genus duelli est inhibitum iure divino, iure gentium, canonico, et civili.

*Qualiter duellum quod fit propter gloriam introductum sit iure naturali, sumpto pro instinctu naturæ ex sensualitate proveniente.*

[Cap. clxxiii.]

Restat de duello quod fit propter gloriam victoriæ quod fit in publico spectaculo, quo iure introductum est, et quo inhibitum. Et dico quod hoc genus duelli est introductum iure naturali, ut sumitur in secundo suo significato, scilicet, pro instinctu naturæ proveniente ex sensualitate, sed est inhibitum iure naturali, sumpto pro iure gentium et iure divino. Est etiam inhibitum iure canonico et civili, modificative tamen, ut statim subiciam. Declaremus singula. Dixi quod erat introductum iure naturali, sumpto in secundo suo significato. Hoc probatur, ut dictum est supra proximo membro. Nam sensualis inclinatio proveniens a principiis naturalibus induxit ad experientiam virium corporalium solum ad gloriam consequendam. Ergo inducit hoc genus duelli inde proveniens, cum producens causa producat effectum, ut iuribus statim allegatis in superiori membro. Hoc tamen genus duelli est minus detestabile primo genere, attento utriusque fine. Nam primum genus duelli fit propter exterminationem finaliter, occasione inimicitiae naturalis manentis. Hoc autem non fit necessario ad exterminandum, sed vincendum, quod contingere potest sine exterminatione. Ergo hoc minus detestabile, cum actus hominum distinguantur propter fines intentos, ff. De furtis, l. *verum*, et l. *qui iniuriæ*; ff. De [fal.] furtis, l. *qui ea mente*; xv, q. vi, cap. i; xiv, q. v, *quidquid*; De sent. excom., *cum voluntate*. Hinc est, quod inquit Philosophus, iv Ethicorum, qui fornicatur cum muliere ut pecuniam inde detrahat non mœchia, sed avarus. Sic igitur, fine ponderato, hoc minus detestabile illo. Confirmatur. Primum genus insurgit ex odio, quod in se detestabile est

si sine causa rationabili proveniat, ut in proposito. At hoc genus duelli sine odio provenit. Nam et naturales amici duellabant in spectaculo ad finem gloriæ consequendæ. Confirmatur. Illud est minus detestabile quod minus distat a naturali æquitate, sed hoc secundum genus duelli minus distat a naturali æquitate. Ergo. Probatur maior. Nam detestatio et approbatio actuum provenit a naturali æquitate, super qua fundantur inhibitiones et permissiones iuris, ut l. *ius civile*, ff. De iustit. et iure; et can. *ius naturale*, i distinctione. Probatur minor. Nam hoc duellum non distat ab æquitate iuris naturalis, nisi quia ex illo sequi posset hominis occisio, qui actus tendit in destructionem Vniversi, super qua æquitate fundatur inhibitio legis novæ civilis, ut l. una, C. De gladiat., lib. xi. Cum tamen lege veteri non esset facta inhibitio, quia sic se occidentibus remittebantur actiones, ut l. [hac] *qua actione*, § *si quis in colluctatione*, ff. Ad leg. Aquiliam. Sed primum genus distat a naturali æquitate. Primo, quia tendit ad necessariam alterius vel utriusque exterminationem. Distat etiam in fomite odii, quod naturalis æquitas abhorret, si sine causa insurgat. Ergo detestabilius. Confirmatur. Illud est detestabilius quod in totum nocet et in nullo prodest, illo quod partim prodest et partim nocet. Sed primum genus in totum nocet, et in nullo prodest, hoc autem secundum partim prodest. Maior clara. Nam actus denominantur laudabiles et vituperabiles ratione laudabilitatis finis, et ipsius vituperabilitatis, cum finis in talibus ponderetur, ut ff. De ritu. nupt., *si quis in senatorio*; ff. De iure fisci, l. *non intelligitur*, § *si quis palam*; ff. De iudiciis, l. *cum furiosus*. Minor probatur. Nam primum genus fit solummodo propter exterminationem mutuam, et hoc nocet, secundum autem fit in publico spectaculo propter lætitiā et recreationem populi. Et ob hoc ludi permittuntur et spectacula, C. De spectacul. et scænic. et lenon., per totum titulum, excepta l. fin., lib. xi; et C. De expen. ludor., l. una. Est Græca constitutio. Ex his infertur hoc genus duelli introductum iure naturali, sumpto in secundo suo significato, et ipsum fore minus detestabile primo genere.

[Cap. cxxiv.]

*Qualiter duellum quod fit propter gloriam inhibitum sit iure divino.*

Restat videndum quomodo hoc genus duelli est inhibitum. Et dicebam ipsum inhibitum iure divino, iure gentium, et iure positivo, canonico, videlicet, et civili. Quod autem iure divino sit inhibitum, probatur. Nam cum aliquid aliquo iure inhibetur, inhibetur etiam omne id per quod pervenitur ad illud. Sed iure divino inhibetur homicidium, ad quod pervenitur per hoc genus duelli. Ergo. Probatur maior per l. *oratio*, ff. De sponsal.; ff. De fideius., l. *cum lex*; C. De usuris, l. *eos*, in fine; C. De usuris rei iudic., l. ult. in fine; ff. De pet. hæred., l. *sed si lege*, § *item veniunt*; ff. De mino., l. iii, § *sed utrum*. Minor probatur, Deuteronomii v cap., "Non occides," quod autem per hoc genus duelli perveniatur ad homicidium, luce clarius est. Confirmatur. Ille actus a iure divino inhibetur qui est alienus a fonte caritatis,



sed hoc genus duellandi est huiusmodi. Ergo, etc. Probatur maior, nam caritas est fundamentum omnium virtutum, et exclusiva vitiorum, De Pœnit., dist. ii, *caritas est*, et cap. *ergo*, et quasi per totam primam partem illius distinctionis; et sic alienum a caritate sapit naturam peccati, et sic inhibitum iure divino. Probatur minor. Nam caritas est dilectio Dei et proximi sicut suiipsius, ut cap. *proximos*, De Pœnit., dist. ii; sed duellans in spectaculo duellat ut devincat proximum, et sic non diligit. Ergo inhibitum iure divino.

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*Qualiter duellum, inhibitum propter gloriam consequendam, prohibitum sit iure gentium.*

Dicebam etiam quod erat inhibitum iure gentium. Hoc sic probatur. Ille actus est inhibitus iure gentium qui est tendens in destructionem Vniversi. Hoc genus duellandi est huiusmodi. Ergo. Maior probatur. Nam æquitas naturalis, super qua fundatur ius gentium, tendit in conservationem et augmentum Vniversi, ff. De iustit. et iure, l. i, § *ius naturale*; et l. *ex hoc iure*, ff. eod. titulo. Probatur minor. Nam hoc genus duellandi tendit in destructionem et exterminationem hominis, qui est nobilissima pars Vniversi, immo est finis productorum, ff. De usuris, l. *in pecudum*; ergo inhibitum iure gentium. Confirmatur. Ille actus est inhibitus iure gentium, qui est repugnans præceptis naturalis æquitatis, quæ est ipsum ius gentium, vel ipsius fundamentum. Hoc genus duellandi est huiusmodi. Ergo, etc. Maior probatur. Nam omne illud est iure gentium inhibitum cuius contrarium est præceptum, cum contrariorum sit eadem disciplina, ff. De his qui sunt sui vel alien. iuris, l. i; Instit., eod. tit., in princip.; xxxii dist., *hospitiolum*. Probatur minor. Nam hoc est unum de præceptis iuris gentium, quod quis non locupletetur cum aliena iactura, ut l. *nam hoc*, ff. De condic. indebiti; et regula *locupletari*, De regul. iur., Lib. VI. Hoc etiam est unum præceptum iuris gentium, quod tibi non vis fieri, alteri non facias, ut in principio Decretorum, sed hoc genus duellandi repugnat utrique præcepto. Et primo, primo præcepto, Nam duellans quærit gloriam de vituperio socii et proximi, etiam sibi fieri hoc nollet, ergo inhibitum iure gentium. Confirmatur. Ille actus est inhibitus iure gentium qui est species belli iniusti. Hoc genus duellandi est huiusmodi. Ergo. Probatur maior, nam bellum iustum solum est introductum iure, ut l. *ex hoc iure*, ff. De iustit. et iure; et l. *hostes*, ff. De captivis. Minor patet. Nam hoc non est indictum auctoritate Principis, nec propter necessariam defensam. Ergo. Ex his infertur hoc genus duellandi inhibitum iure gentium. Sed statim prædictis opponetur sic. Hoc genus duellandi fit propter experientiam fortitudinis, quæ fortitudo est virtus moralis, immo et cardinalis. Sed virtutes morales, nec earum exercitia, sunt inhibita iure gentium. Ergo non procedunt statim allegata. Quod autem hic sint actus veræ fortitudinis, quæ est virtus moralis, patet. Nam in hoc genere duellandi fit expectatio et aggressus. Solutio. Pro evidentia huius contrarii est attendendum quod reperitur

fortitudo vera, quæ est virtus moralis et cardinalis, et illa, nec eius operatio, sunt inhibita iure gentium. Sunt etiam fortitudines similitudinariæ, de quibus Philosophus, iv Ethicorum, tractatu de fortitudine, quæ similitudinariæ participant actus aggrediendi et exspectandi, et sunt quinque. Nam aliqui aggrediuntur propter timorem pœnæ, quia fugientes de bello puniuntur. Quidam aggrediuntur propter experientiam artis bellandi, ut stipendiarii. Et isti, ut faciliter aggrediuntur, sic faciliter fugiunt, ut inquit Philosophus, ubi supra. Quidam aggrediuntur propter iram, non deliberantes periculum. Quidam aggrediuntur propter spem, non credentes subesse periculum, nec alias aggressuri, si existimarent subesse periculum. Quidam aggrediuntur propter gloriam mundi consequendam, quia fortes laudari solent, timidi autem vituperari. Istæ sunt quinque fortitudines, similitudinariæ ad veram fortitudinem, quæ est vera virtus moralis, et cardinalis existit. Ad hoc autem quod sit vera fortitudo, requiruntur hæ conditiones, videlicet, quod operetur quis scienter, nam opus ignoratum non est opus virtutis, quia prudentia debet regulare omne opus virtutis. Secundo requiritur, quod eligens. Tertio requiritur, quod eligat propter hoc, id est, propter bonitatem et honestatem operis in se, non autem propter aliquid extrinsecum. Quarto, requiritur quod operetur firmiter et delectabiliter. Omnes similitudinariæ, de quibus supra, deficiunt secundum plus et minus a vera. Omnes tamen deficiunt in hoc, quia, operantes secundum illas, non operantur propter se, id est, propter bonitatem et honestatem operis. Sic in proposito. Isti operantes aggrediendo et exspectando in hoc genere duelli, hoc faciunt propter gloriam, non autem propter bonitatem et honestatem actus in se, nec etiam hic operantur circa quod debent. Hæc colliguntur ex his quæ tractat Philosophus, iv Ethicorum, tractatu de fortitudine. Ex prædictis igitur infertur hoc genus duellandi inhibatum iure gentium.

*Qualiter duellum quod fit propter gloriam inhibatum sit iure canonico et civili.*

Dicebam hoc duelli genus inhibatum iure canonico et civili. Iure canonico est clarum, cum imitetur, quoad prohibitionem et permissionem, trames legis divinæ, qua hoc duellum est inhibatum, ut supra deductum est. Probat etiam rubrum et nigrum, De pugnan. in duello, licet ibi ponatur clericis, quia idem in omnibus. Melius probat titulus De torneamentis, ubi decedentibus in torneamentis denegatur sepultura. Hoc ergo clarum. Sed de iure civili qualiter sit inhibatum, hic aliquando est insistendum, quia lege veteri Digestorum videtur permissum genus hoc duelli. Probat textus ff. Ad leg. Aquil., l. hac actione, § si quis in colluctatione sive in pancratio; ubi apparet cessare actionem pœnalem contra occidentem in hoc duello ubi pugiles colluctantur. Lege nova Codicis videtur inhibatum, ut probat textus C. De gladiat., l. una, lib. xi. Quid ergo dicemus? Dicemus ne legem veterem esse correctam per novam, ut l. non est novum, ff. De legibus. Hic puto attendendum quod



potest fieri pugna non cruenta, ubi non tenditur ad sanguinis effusionem, ut cum aliqui brachiis colluctant, vel similibus modis, et hoc genus colluctandi non reperio inhibatum iure civili, nec veteri nec novo, immo iure novo permittuntur spectacula, propter populi recreationem, ut C. De spectac., per totum titulum, excepta l. *lenones*, lib. xi; et C. De expen. ludorum, per totum eundem librum. Potest et fieri pugna tendens ad sanguinis effusionem, ut in torneamentis et in duello ad mortem tendente, et ista sine dubio iure novo Codicis est inhibita, ut C. De gladiat., lib. xi, et ratio prohibitionis est tacta, ubi probatum est ipsum inhibatum iure divino et iure gentium. Lege autem veteri apparet permissum, ut l. *hac actione*, § *si quis in colluctatione*, ff. Ad leg. Aquiliam. Sed fortissime instabis sic. Tu dicis, hoc duellum prohibitum iure gentium, sed ius civile non est alia æquitas ab æquitate iuris gentium, immo est ipsamet æquitas iuris gentium, addens specificationem et limitationem ipsius, ut l. *ius civile*, ff. De iustit. et iure; ergo si est inhibatum iure gentium, non poterit esse permissum iure civili, alias ius civile repugnabit iuri gentium. In hoc contrario dubitavi, sed ponderavi verba, § *si quis in colluctatione*, et mentem quam credo fuisse legislatoris. Et pro evidentia pondero quod reperitur triplex permissio. Quædam est permissio simplex, quæ est remittens et indulgens pœnam, de qua habetur iv dist., *denique*, nam, ut ibi notat glossa, ibi fit remissio pœnæ, non culpæ. Secunda permissio est quæ tollit impedimenta eius quod permittitur, ut dicit textus quod Iudæi permittuntur habitantes inter nos, nam tolluntur impedimenta, impediencia ne possint secundum eorum ritus habitare nobiscum, ut xlv dist., *qui sincera*. Reperitur et tertia permissio, quæ præstat iuvamen actui qui permittitur, secundum quod dicimus quod ecclesia aliquando permittit clericum occidi a iudice sæculari, præstando iuvamen, quia ipsum positive tradit, ut cap. *cum non ab homine*, De iudic.; et cap. *ad falsariorum*, De crim. falsi; et cap. *novimus*, De verb. significatione. Secunda permissio addit supra primam, quia impedimentum tollit, quod non faciebat prima, immo solum pœnam remittebat. Tertia addit supra secundam, quia præstat iuvamen actui permissio, quod non faciebat secunda, immo solum impedimenta tollebat. Nunc verba applicando ad propositum, si bene pondero, § *si quis in colluctatione*, ibi textus remittit pœnam occidenti in colluctatione, et subditur ratio, quia non fit iniuriæ causa. Erit igitur permissio prima pœnæ remissoria, sed nullibi reperio cautum iure quod hoc duellum sit permissum secunda vel tertia permissione. Hæc autem non repugnant quod ius gentium inhibeat, et civilis lex pœnam remittat, nam lex civilis, imponens pœnam pro homicidio, imponit propter dolum, et sic, quia hic dolus abest, lex civilis pœnam remittit, ut supra inductum est. Ex his infertur circa hoc genus duelli, quo iure inhibatum sit, et quo iure permissum.

*Propter quid permissum, et propter quid inhibatum, sit duellum?*

[Cap. clxxv.]

Circa quartum membrum, quo quærebatur propter quid sit permissum et propter quid inhibatum, est videndum de duello quod fit gratia purgationis, quo iure sit inhibatum et quo permissum. Et hoc proprie et stricte "duellum"

apud vulgares nuncupatur. Et dico quod duellum est inhibitum iure divino, et iure gentium, et iure positivo. Canonico, indistincte. Civili, regulariter, sed iure Lombardo in casibus permittitur, ut subdam, cum illos discutiam.

*Qualiter duellum purgatorium inhibitum sit iure divino.*

Quod iure divino inhibitum sit hoc duellum, probatur sic. Ille actus est inhibitus iure divino per quem fit Dei temptatio. Sed hoc duellum est huiusmodi. Ergo. Probatur maior per illud præceptum, "Non temptabis Dominum Deum tuum." Probatur minor, nam tunc temptatur Deus, cum perquiritur aliquid contra naturam, quod non est producibile, nisi miraculo divino, sic est directe in hoc duello purgationis. Nam naturale est quod fortior et ingeniosior vincat minus fortem, et minus ingeniosum. Nec, econtra, fieri potest ordine naturali, sed aliquando minus fortis et minus ingeniosus fovet iustitiam, et per duellum quærimus ut victoriam obtineat, et eius iustitia declaretur. Sic igitur Deus temptatur, ut miraculum faciat. Confirmatur. Ille actus est inhibitus iure divino qui est adinventus fabricante diabolo. Hoc duellum est huiusmodi. Ergo. Probatur maior. Nam nihil commune Dei ad Diabolum, lucis ad tenebras. Minor probatur per cap. *Mennam*, ii, q. v, et cap. *consuluisti*, eadem causa et quæstione. Confirmatur. Ille actus est inhibitus iure divino per quem innocens damnatur. Hoc duellum est huiusmodi. Ergo. Probatur maior. Nam Deus non vult damnari innocentem, xxii, q. ii, cap. *quæritur*. Probatur minor per cap. *significantibus*, De purg. vulgari. Ergo.

*Qualiter duellum purgatorium inhibitum sit iure gentium.*

Secundo dixi, hoc duellum inhibitum iure gentium. Hoc probatur sic. Ille actus est inhibitus iure gentium qui repugnat naturali æquitati, super qua fundatum est ius gentium. Sed duellum purgationis est huiusmodi. Ergo. Patet maior. Probatur minor. Nam dictat æquitas iuris gentium delinquentes puniri, insontes absolvi. At in hoc duello contingit quandoque econtra. Ergo inhibitum iure gentium. Etiam repugnat illi præcepto "quod tibi non ius," in principio Decretorum.

*Qualiter duellum purgatorium inhibitum sit iure canonico.*

Dixi et ipsum inhibitum iure canonico. Hoc claret De purg. vulg., per totum; De pugnan., per totum; ii, q. v, a capitulo *consuluisti* usque ad finem quæstionis. Et rationes possent reddi quæ redditæ sunt ad probandum quod sit inhibitum iure divino, cum ius canonum imitetur prohibitiones et permissiones legis divinæ. Confirmatur. Et per hoc probatur etiam quod iure civili sit inhibitum. Nam actus ille est inhibitus iure positivo, per quem fit exclusio observantiæ iuris positivi. Hoc duellum est huiusmodi. Ergo. Probatur maior. Nam si observantia est mandata a lege positiva, ergo observantiæ exclusio est inhibita, ut, sicut propositum in proposito, ita oppositum in opposito, ff. De his



qui sunt sui vel al. iur., l. i ; Instit., eod. tit., in princip. ; xxxii dist., *hospitiolum*. Probatur minor, nam iure positivo introductæ sunt actiones, tam civiles quam criminales, et tota forma iudiciaria, per quam proceditur ad iura partium declaranda, ut l. *properandum*, C. De iudiciis ; Authent., *offeratur* ; et l. una, C. De litis contest. ; et l. *prolatam*, C. De sentent. et interloc. omn. iudic. ; et cap. *quoniam contra*, De probationibus ; ut unicuique reddatur quod suum est, xii, q. ii, *cum devotissimam* ; et l. *iustitia*, ff. De iustit. et iure ; et § *iustitia*, Instit., eod. titulo. Sed duellando hæc observantia penitus excluditur. Ergo hoc duellum est iure positivo inhibitum. Confirmatur. Ille actus est iure positivo inhibitus per quem partibus iustitia denegatur, sed hoc duellum est huiusmodi. Ergo. Probatur maior, quia ad hunc finem promulgata sunt iura positiva, divinitus per ora principum, ut l. ult., C. De long. tempo. præscript. ; viii dist., *quo iure* ; xvi, q. i, *placuit*. Probatur minor, nam per hoc duellum aliquando contingit innocentem succumbere in duello, et sic sibi iniuriam irrogari, et aliquando contingit nocentem obtinere, et sic non fit iustitia provocanti. Ex his infertur hoc genus duelli quod fit propter purgationem et criminis impetitionem fore inhibitum iure positivo ; canonico, indistincte ; civili, regulariter.

*Qualiter duellum purgatorium iure civili regulariter sit inhibitum.*

Dixi etiam regulariter iure civili inhibitum hoc duellum. Fallit tamen in duobus casibus per Legem Frederici, De pace tenenda et eius violatoribus, ut puta, si quis intra tempora pacis hominem occiderit, et constet de homicidio, punitur poena capitali, ut fractor pacis, nisi per duellum probare voluerit quod hoc fecerit se defendendo, et est ille specialis casus quo duellum est in optione rei. Alter casus, si intra tempora pacis vulneraverit, punietur, nisi probare voluerit quod hoc fecerit se defendendo. Hi duo casus habentur De pace tenenda et eius violatoribus, l. una, primus in § *si quis hominem infra pacem*, secundus in § *si quis alium*, in eadem lege. In aliis autem casibus permittitur iure Lombardorum, ut infra prosequar. Ex his concluditur tertium principale membrum huius tractatus, scilicet, quo iure sit duellum introductum, et quo inhibitum, distinguendo singulas species duelli. Per prædicta igitur patet explicatio quarti membri videlicet, propter quid inhibitum, et propter quid permissum. Nam duellum primum omni iure est inhibitum, et nullo permissum, et propter quid supra apparuit. Sic de secundo, et sic de tertio, singula tacta singulis membris ad hoc propositum reducendo.

*In quibus casibus duellum purgatorium permittatur ?*

[Cap. cxxvi.]

Circa quintum principale, videlicet, in quibus casibus permittatur duellum, est videndum. De prima specie dictum est quod nullo casu. De secunda specie dictum est qualiter. De tertia specie nunc videndum, cum illa iure Lombardo pluribus casibus permittatur, et solum circa tertiam speciem insiendum usque ad finem tractatus.

*Qualiter duellum purgatorium iure Lombardo in xx casibus permittatur.*

Quærendum est igitur, quibus casibus hoc duellum permittatur, ultra duos supra notatos, qui habentur in Lege Frederici, De pace tenenda et eius violatoribus? Solutio. Permittitur duellum in crimine legis Iuliæ maiestatis, cum quis alium impetit super illo crimine, ut in Lombarda, De publicis criminibus, l. *si quis*, et est ultima. Fit secundo, cum dicitur uxorem conciliatam in mortem viri, ut in Lombarda, De consilio mortis, l. *si mulier*, et est ultima. Fit et tertio, in iniuria cucurbitationis, ut si quis aliquem vocaverit "cucurbitam," ut in Lombarda, De conviciis, l. *si quis alium*. Fit et quarto casu, de homicidio commisso intra treugam, ut in Lombarda, De homicidio, l. *qui intra treugam*. Fit quinto, pro homicidio commisso in absconso, ut in Lombarda, De homicidio, l. *liber homo*. Fit sexto, in crimine parricidii, si dicatur commissum propter cupiditatem bonorum ipsius, ut in Lombarda, De parricidio, l. ult., in fine. Fit septimo, de furto commisso a servo, si dominus negaret servum suum fecisse furtum, ut in Lombarda, De furtis, l. *si quis alium*, et fuit lex convalcosiana, secundum quosdam. Fit octavo, in crimine adulterii, ut si quis accusetur adulterasse uxorem alterius, ut in Lombarda, De adulterio, l. iii. Fit nono, si quis dicat aliquam mulierem adulteratam, et sic probare velit, ut in Lombarda, De iniur. mulier., l. ii, incipit *si quis puellam*. Fit decimo, si dicatur quem malo ordine possedissee rem mobilem sive immobilem xxx annis, ut in Lombarda, De præscript., l. *si quis alium*. Fit undecimo, inter contrarios testes, ut in Lombarda, De testi., l. *si quis cum altero*; quod procedit si producantur ab utraque parte, si autem ab eadem parte, non fit duellum. Nam aut actor probat, et condemnatur reus, aut nihil probat, et absolvitur reus. Sed si ab utraque parte producantur, et cetera sint paria, tunc fit duellum. Fit duodecimo, propter debitum paternum, contra filium negantem, ut in Lombarda, Qualiter quis se defendat, et in quibus casibus pugna prohiberi vel fieri debeat, l. *si quis post mortem*. Et verus intellectus illius legis est quod intelligatur debitum ex maleficio. Fit tertiodecimo, propter incendium, si agatur contra malefactorem, ut in Lombarda, Qualiter quis se defen., etc., l. *si quis alium*. Non autem fit si agatur contra conciliatorem, ut in Lombarda, De consiliis illicitis, l. una, in fine. Fit quartodecimo, pro adulterio, ut si maritus dicat uxorem suam adulteram esse, ut in Lombarda, Qualiter quis se defendat, etc., l. *si quis uxorem*. Fit quintodecimo, si maritus suspicetur quod quis turpiter se habuerit cum uxore, et intelligit lex turpiter tangendo, ut in Lombarda, Qualiter quis se defendat, etc., *si quis amodo*. Fit et sextodecimo pro periurio, ut in Lombarda, Qualiter quis se defendat, etc., l. *de furto*. Fit septimodecimo, etiam duellum pro investitura, ut si quis dicat se primo investitum, et de possessione eiectum, et alius dicat idem, ut l. *de investitura*. Fit octavodecimo, pro deposito negato, ut si depositum sit ultra solidos xx, ut l. *si quis pro se*. Fit nonodecimo, si dicatur quod aliquis cartam per vim extorserit, ut l. *si quis dixit*, in Lombarda, Qualiter quis se defendat, etc. Vicesimo et ultimo, fit duellum pro libertate petita a servo, ut l. *si servus*. Quidam dicunt quod illa lex fuit convalcosiana.



*Inter quos iniri debeat duellum ?*

[Cap. clxxvii.]

Circa sextum principale, videlicet, inter quos iniri possit duellum, est videndum.

*Qualiter duellum purgatorium inter principales regulariter fieri debeat ?*

Et dico quod hoc habet regula, attento iure Lombardo, quo duellum permittitur in casibus supra narratis, quod duellum sit inter principales. Sed illa regula fallit in octo casibus. Primus, si iuvenilis ætas impediat. Secundus, si ætas decrepita, nam in ea labor et dolor. Tertius, si infirmitas aliqua duellare prohibeat. Isti tres casus habentur in Lombarda, Qualiter quis se defendat, etc., l. *quacunque lege*; et De parricidio, l. ultima. Quartus est, si servus, qui est in quasi possessione servitutis, proclamat in libertatem, tunc dominus duellat per campionem, ut in Lombarda, Qualiter quis se defendat, etc., l. *si quis servus propter appetitum*. Quintus, si ecclesiastica sit persona, ut puta clericus, vel Comes, causas habent adinvicem, vel cum aliis, tunc pugnant per campionem, ut in Lombarda, Qualiter quis se defendat, l. finali. Sextus, ubi mulier accusatur de adulterio, ut in Lombarda, eod. tit., l. *si quis uxorem*. Septimus, si testes actoris sunt contrarii testibus rei, tunc testes actoris debent assumere unum campionem, et testes rei assumere alium, ex testibus met.<sup>(7)</sup>, ut in Lombarda, eod. tit., l. *si quis cum altero*. Octavus, si servus accusetur de furto, ut in Lombarda, De furtis, l. *si servus, dum de furto*. Hodie tamen de consuetudine permittitur cuilibet habere campionem.

*Qualiter fiat duellum ?*

[Cap. clxxviii.]

Circa septimum principale, scilicet, qualiter fiat duellum, est videndum.

*Qualiter duellum purgatorium ad instar sit iudicii contentiosi ?*

Et hic præmitto quod duellum est redactum ad instar iudicii contentiosi, nam sicut in iudicio contentioso sunt actor, reus, iudex, instrumenta causam instruentia, per quæ, largo modo sumpta pro quibuscunque causam instruentibus, ut l. i, ff. De fide instrum., fit veritatis declaratio, ut feratur definitiva sententia, sic in duello sunt actor et reus, ut puta provocans et provocatus, iudex, instrumenta, utpote arma, quibus se invicem percutiunt. Nam sicut in iudicio contentioso quis alium convincit testibus, scripturis, et confessionibus, ut De restit. spol., *cum ad sedem*, sic in duello armis corporalibus convincit, ut sicut in primo sic convictus est, in casu condemnationis, sic a simili convictus in hoc. Ad similitudinem igitur iudicii contentiosi quærendum est de hoc iudicio, scilicet, duellari.

[Cap. clxxix.]

*An iuramentum de astu inter duellantes sit præstandum et per quem ?*

Et primo quæro, utrum iuramentum de astu sit præstandum, et an per provocantem et provocatum, an per alterum, et per quem ? Et iuramentum de astu in hoc iudicio idem est quod iuramentum de calumnia in iudicio contentioso fori civilis vel ecclesiastici. Et videtur quod uterque iurare debeat. Nam iuramentum de calumnia præstatur in iudicio contentioso per actorem et reum, ut l. i et l. ii, C. De iur. calumn., et Authent., *principales*, eod. tit. ; Extra., eod. tit., per totum. Ergo hic a simili, cum sit eadem ratio, et sic eadem iuris dispositio, ff. Ad leg. Aquil., l. *illud* ; C. Ad leg. Falc., l. ult. ; De constitut., *translato* ; cum similibus. Solutio. Hic fuerunt opiniones variæ, attento iure Lombardo. Vna fuit opinio, et fertur quod fuit Mantuanorum, quod in hoc iudicio duellari præstatur sacramentum de astu ab utroque, tam ab actore quam a reo, et sic, secundum eos, corriguntur omnia iura loquentia de sacramento de astu non præstando. Adducunt, quod habetur in Lombarda, Qualiter quis se defendat, l. *mentio*. Sed illa lex habet quatuor intellectus. Vnus, quod intelligatur in testibus contrariis, ut potius fiat duellum quam periurent. Secundus, quod intelligatur in duobus contendentibus se possidere, ut potius duellent quam deirent. Tertius, quod intelligatur in eo contra quem iuratum est, quod furtum commiserit, et ille vult iurare contrarium. Quartus, cum duo litigant coram iudice, et unus iuravit de lato iuramento, et alter vult iurare contra. Horum sententia reprobari videtur, quia non est hoc cautum iure, immo contrarium, ex parte rei, ut solus actor iuret, ut in Lombarda, Qualiter quis se defendat, l. *si quis alium astu*. Fallit ubi fit duellum propter contrarietatem testium, ut in Lombarda, De testi., l. fin. ; et Qualiter quis se defendat, l. *si quis cum alio*. Secunda fuit opinio Domini Caroli Beneventani, qui voluit distinguere an quis veniat ad duellandum in causa ipsum totaliter contingente, aut prorsus aliena, an principaliter aliena, secundo sua. In primo casu, utpote cum quis provocat aliquem super furto, vel incendio, sibi facto, vel adulterio uxoris suæ, tunc refert aut provocando dicit, “ tu commisisti,” aut dicit, “ suspicor quod commiseris.” Primo casu, debet iurare rem ita esse. Secundo casu, debet iurare quod iustam habet suspicionem, et cum provocat ratione suspicionis, debet addicere causam suspicionis, utpote quod ipsum viderit loqui cum uxore sua, et sic de aliis. Si autem provocat ad duellum in causa aliena, id est, non propter aliquid commissum contra se, sed contra alium, utpote cum provocat super crimine læsæ maiestatis, tunc, cum accedat, ut testis, debet iurare sic esse, ut præstatur iuramentum testis, ut C. De testi., l. *iurisiurandi* ; De testi., cap. *tuis*, et cap. *cum nuntius* ; cum similibus. Et sic dicit in reo, ut iuret rem sic non esse. Hæc opinio, quoad sacramentum rei, reprobat, ut supra proxima. Tertia fuit opinio, et fertur fuisse Papiensium, videlicet, quod ex parte rei et provocati nullum præstari debeat iuramentum, sed ex parte actoris. De actore probatur in Lombarda, Qualiter quis se defendat, l. *si quis astu*. De reo probant. Nam reus tenetur ad alterum duorum, vel pugnet, vel si renuit, condemnetur. Sic igitur iuramentum pro parte rei nihil operatur, et sic ut superfluum resecandum, l. *ampliolem*, § *in refutatoriis*, C. De



appel. ; 1. *non cogendum*, § *Sabinus*, ff. De procuratoribus. Quarta fuit opinio, et fuit cuiusdam Alberti, qui voluit dicere quod actor semper iurat præterquam in crimine læsæ maiestatis, et testibus contrariis, et investitura prædii. In reo concordat cum aliis, præterquam cum Papiensibus. Et hoc credo in actore verum, quod regulariter præstet, præterquam in casibus de quibus supra. Et est ratio ut compellatur reus se purgare, non præcedente aliquo iudicio contra eum. Immo volunt iura, ad minus præcedere infamiam, et deficientibus probationibus exponitur purgationi, De purgat. canon., per totum ; ii, q. iv, per totum ; De accusat., *qualiter*, ii, et ibi notandum. Sic igitur iure Lombardo, quo duellum permittitur in casibus supra enumeratis, ad minus ex parte actoris præcedat iuramentum, et iuramentum debet esse conforme provocationi, ut si provocat de rei existentia, sic iuret si de suspicione, sic etiam iuret ut etiam differentia notatur inter iuramentum calumniæ et veritatis, ut, unum de credulitate, aliud de veritate, ut dixit dominus Carolus. In reo autem non concipio rationem necessitatis iuramenti.

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*An uni parti dato campione, in casibus a iure permissis, licitum sit alteri parti dare campionem?* [Cap. clxxx.]

Secundo quæro, numquid si alicui partium detur campio, in casibus permissis a iure Lombardo, qui sunt octo, ut supra notavi, an tunc liceat alteri parti dare campionem? Solutio. Hic fuerunt opiniones variæ. Aliqui dicunt quod sic. Allegant quod habetur in Lombarda, Qualiter quis se defendat, 1. *quicunque*. Fallit in casu ubi servus contendit contra dominum. Secunda fuit opinio, quod alteri parti non liceat. Tunc et est ratio. Nam lex tunc in tribus casibus permittit, ergo denegat in aliis, ut ff. De legi., 1. *ius singulare* ; ff. Ad municip., 1. i ; ff. Solut. matrim., 1. *si cum dotem* ; C. De procur., 1. *maritus* ; De translatione prælatorum, cap. *inter corporalia* ; cum similibus. Ego credo hic ponderandum quod in hoc [refert] differt hoc iudicium duelli a iudicio contentioso, nam in iudicio contentioso regulariter quis per alium litigat, et propter hoc inventus est procuratorum usus, ut ff. De procurat., 1. i, et [l.] § *usus* ; sed in duello regulariter solum per se, et in hoc æquiparatur iudicio criminali, in quo non intervenit procurator ad causas causæ allegandas, ff. De public. iudic., 1. pænult., § *qui ad crimen* ; et 1. *servum quoque*, § *publice*, ff. De procurat. ; et cap. *licet*, et cap. *veniens*, De accusationibus. Et est ratio, quia in persona<sup>9)</sup> procuratoris non potest ferri sententia condemnatoria, quia innocens ; in personam domini, non, quia absens, ff. De pœnis, 1. *absentem* ; sic directo in duello, nam in duello duellantes ad prostrationem personarum tendunt, ut ex hoc eliciatur veritas per hoc genus probationis. Et sic regulariter non intervenit campio, præterquam in casibus permissis. Si igitur emergat casus dandi campionis ex parte unius, et non emergat ex parte alterius, ille solus dabit campionem. Si autem utrinque emergat casus, uterque dabit, nisi dicas propter æqualitatem hinc inde servan-

dam, ubi licitum uni det alter, ut l. *terminato*, C. De fruct. et lit. expensis; De mutuis petit., cap. i, et per totum titulum; regula *non licet*, De regul. iur., Lib. VI; et hoc sapit æquitatem, sed prius dictum verius de rigore iuris.

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[Cap. clxxxi.] *Qualiter in casibus hinc inde, cum conceditur campio, fiet ipsorum datio et concessio?*

Tertio quæro, qualiter in casibus hinc inde, cum conceditur campio, fiet ipsorum datio et concessio? Solutio. Hic pondero quod, sicut in foro contentioso causa peroratur, sic per campiones in iudicio duellari, et sic infero quod, sicut in iudicio contentioso fieri debet æqua advocatorum distributio, ut l. *providendum*, C. De postul., sic, ubi hinc inde fit campionum concessio, debet fieri ipsorum æqua distributio. In principalibus autem duellantibus non est ponderanda æqualitas, vel inæqualitas, cum causam propriam propriis viribus corporis sponte ad exitum perducant.

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[Cap. clxxxii.]

*An quilibet admittatur pro campione?*

Quarto quæro, an quilibet admittatur pro campione? Solutio. Vt dictum est, hic æquiparatur campio advocato, sicut igitur quilibet admittitur ad postulandum, nisi sit prohibitus, ut l. i, ff. De postul.; sic quilibet admittitur ad officium campionatus, nisi repellatur a iure. Repellitur autem fur, ut in Lombarda, Qualiter quis se defendat, l. *si ut campionem*. Et est ratio, quia infamis, ff. De furt., l. *non potest*; et si succumbit, præsumitur ratione proprii delicti succumbere, sic et alii criminosi gravibus criminibus irretiti, ratione prædicta.

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[Cap. clxxxiii.]

*In cuius electione sit duellum?*

Quinto quæro, in cuius electione est duellum? Solutio. Regulariter in electione actoris, sicut dicimus in iudicio contentioso. Hoc habetur in Lombarda, Qualiter quis se defendat, l. *si quis amodo*. Fallit in crimine læsæ maiestatis, ubi ex necessitate cogitur duellare, et si aliquis dixerit "argam," ut in Lombarda, De publicis criminibus, l. fin.; et in Lombarda, De iniur. mulier., l. ii.

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[Cap. clxxxiv.]

*Qualiter ordinetur duellum?*

Sexto quæro, qualiter ordinari debeat duellum? Solutio. Iure non est cautum, sed consuetudine observatur, quod eligatur locus parvus amplus in civitate vel extra, qui locus circumcirca claudatur chordis, ita ut, misso banno, nullus audeat intrare nisi duellantes, nec audeat tumultum facere, propter



quem altera pars offendi posset. Et iudex erit ibi, in loco ut videre possit utrumque duellantium, et qualiter unus alium recipiat, ut finaliter iudicet in duello an quis succubuerit.

*Quibus armis duellari debeat ?*

[Cap. clxxxv.]

Septimo quæro, quibus armis duellari debeat ? Solutio. Iure Lombardo permittuntur scuta, fustes, ut in Lombarda, De testi., l. *si quis cum altero* ; et Qualiter quis se defendat, l. *mentio* ; et hæc debent esse æqualia et a iudice præstari.

*An si arma, seu fustes, unius duellantium frangantur, vel cadant, debeant alia dari ?*

[Cap. clxxxvi.]

Octavo quæro, quid si arma, seu fustes, unius duellantis frangantur, vel cadant, an debeant alia dari. Et videtur quod sic. Nam dicit textus quod pugna debet fieri cum fustibus et scutis, ut in Lombarda, Qualiter quis se defendat, l. *mentio* ; et in Lombarda, De testi., l. *si quis cum altero* ; sed nisi alia darentur, non fieret cum fustibus. Ergo. Confirmatur. Nam fustes in duello æquiparantur testibus et instrumentis in iudicio contentioso, sed in foro contentioso fit multiplicatio productionis testium et instrumentorum, etiam si aliquorum dicta frangantur ante publicationem et notitiam dictorum, ut in Authent., De testi., § *si vero* ; De testi., *fraternitatis* ; et Clemen., *testibus*, eod. titulo. Quidam hoc tenent in frangente, secus si cadant, quia tunc debet imputari fortunæ suæ. Alii dicunt quod in nullo casu sunt præstanda, sed imputari debet fortunæ suæ. Alii dicunt stari consuetudini super hoc. Ego credo opinionem secundam fore veram, scilicet, quod non sint alia præstanda, sive cadant, sive frangantur, nisi aliud habeat consuetudo quæ operari potest effectum, ut lex ff. De legi., l. *de quibus* ; C. Quæ sit long. consue., l. ii ; xi dist., *consuetudinis* ; i dist., *consuetudo*. Et est ratio. Nam in duello, ut dixi in principio tractatus, quæritur aliquando quid contra naturam, ut quod minus fortis, et quod minus industrius, vincat fortiolem et magis industrius, quod aliquando contingat casu intercedente. Ergo uterque duellantium dimittendus est subiectioni casuum quibus se libere exposuerunt, alias transiret natura duelli ad purgationem indicti. Confirmatur. Nam, si diceremus dari nova arma, ubi caderent, sic a simili diceremus duellantem cadentem sublevari, quod est absurdum. Nam propter hos casus, aliquando contingit potentiolem succumbere, et in hoc demonstratur iudicium divinum.

*Quis duellantium primo percutere debeat ?*

[Cap. clxxxvii.]

Nono quæro, quis in duello prius percutere debeat ? Et videtur quod provocans, nam hoc iudicium duellare est simile iudicio contentioso, ut supra tactum est sæpius. Sed in iudicio contentioso actor primo porrigit libellum reo, et postea reus respondet, ut in Authent., *offeratur*, C. De lit. contestat. ; et

cap. i, De libel. oblatione. Ergo a simili, provocans primo percutiet provocatum. In contrarium videtur, reus favorabilior est, ut l. *Arrianus*, ff. De obl. et act. ; et regula *favorabiliores*, ff. De regul. iur. ; regula *in pænis*, eod. tit., lib. vi. Solutio. Credo primam partem veram, nec obstant allegata in contrarium, quia illa iura loquuntur in finibus iudiciorum, cum non restat nisi definitiva sententia, quia tunc favendum est reo. Sed circa principia favendum est actori, ut l. *si quis intentione ambigua*, ff. De iudic. ; et l. *inter stipulantem*, § i, ff. De verb. obligationibus. Vel dici posset quod hic non est servandus ordo, sed locus est præventioni vel etiam concursui.

[Cap. clxxviii] *An duellum, prima die non terminatum, sequenti die possit terminari?*

Decimo quæro, an, si duellum terminari non possit prima die, possit ad sequentem diem deferri? Solutio. Dico quod sic. Dico enim donec finiatur instaurandum est.

[Cap. clxxix.] *An succumbens in duello condemnatur in expensis?*

Vndecimo quæro, numquid succumbens in duello debeat in expensis condemnari adversario? Solutio. Ad similitudinem iudicii contentiosi, quo victus victori condemnatur in expensis, ut l. *properandum*, § *sin autem*, C. De iudiciis ; et l. *terminato*, C. De fruct. et lit. expens. ; et cap. *finem*, De dolo et contum. ; cap. *calumniam*, De pœnis. Posset sic in duello dici "victus victori," etc.

[Cap. cxc.] *An provocans in duello succumbens puniatur pœna talionis?*

Duodecimo quæro, an provocans in duello succumbens puniatur pœna talionis? Solutio. Ad similitudinem iudicii criminalis contentiosi, ubi imponitur pœna talionis accusanti succumbenti, ut cap. *super his*, De accus. ; et cap. *licet*, eod. tit. ; et l. *fin.*, C. De accusat. ; sic in duello, cum duellatur propter crimen puniendum ad publicam vindictam.

[Cap. cxcii] *An provocatus ad duellum propter crimen, succumbens et condemnatus, possit de eodem crimine in iudicio contentioso accusari?*

Tertiodecimo quæro, an provocatus ad duellum propter crimen, succumbens et condemnatus, possit de eodem crimine accusari in iudicio contentioso? Solutio. Posset dici quod, cum iure civili duellum purgatorium non approbetur, immo penitus reprobetur, ut l. *una*, C. De glad., lib. xi ; et de iure canonico, ut in De pugnant. in duello ; et De purg. vulg., per totum, ut etiam supra in principio tractatus tactum fuit. Hæc definitio, lege reprobata, paret præiudicium iuridicæ discussioni, et sic non obstat cum de delicto eiusdem sæpius non sit quærendum, ut l. *licet*, in fine, ff. Naut. caup. stabul. ; et cap. *de his*, De accusat. ; quia illa iura loquuntur, cum prior examinatio et discussio fuit iuridica, et sic infertur quod absolutoria lata in duello non parat exceptionem



rei iudicatæ, accusare volenti in iudicio contentioso. Hæc vera, nisi consuetudo regionis aliud induceret, ut, videlicet, servaretur Ius Lombardum, secundum cuius dispositionem consecutus sum hunc passum, et sic limitandæ sunt solutiones præcedentium quæstionum.

*An provocans ad duellum propter crimen publicum, desistens a duello, incidat pœnam Turpiliani ?* [Cap. excii.]

Quartodecimo quæro, numquid provocans ad duellum propter crimen publicum, desistens a duello, incidat pœnam Turpiliani ? Et videtur quod sic, ad instar criminalis iudicii contentiosi, ut l. i, § *si quis autem*, ff. Ad Turpilianum. Solutio. Iure communi non procederet quæstio, cum iurē communi sit reprobatum hoc iudicium, ut supra. Sed, iure quo permissum, posset dici ex eadem æquitate ipsum puniendum, et dico arbitrio iudicis, cum non sit iure expressa, De offic. iudicis delegat., cap. *de causis*, in fine ; ff. De iur. delib. <sup>(7)</sup>, l. i. Pœnam tamen Turpiliani non credo ipsum incidere, cum pœnæ sint restringendæ, ut l. *cum quidam*, ff. De lib. et posth. ; et § *pœnæ*, De Pœnit., dist. i ; regula *in pœnis*, De reg. iuris, lib. vi. Hæc, ut dixi, iure Lombardo procedunt. Nam iure communi, recedens a duello non punitur, immo talis legi obtemperat, et prosequens facit contra legem.

*An provocans ad duellum iure Lombardo possit desistere cum licentia iudicis ?* [Cap. exciii.]

Quintodecimo quæro, numquid provocans ad duellum iure Lombardo possit desistere cum licentia iudicis ? Apparet quod sic, ad instar accusantis abolitionem impetrantis, ff. Ad Turpil., l. *abolitio*, et l. *si quis interveniente*, et l. *Domitianus* ; C. De abolit., per totum. Solutio. Iure communi hoc clarum, quia sine abolitione, et bene facit. Iure Lombardo credo etiam quod iudex ex causa concedere potest, ad instar accusatoris, ut supra allegatum est.

*An provocans ad duellum desistere possit sine pœna ante litem contestatam ?* [Cap. exciv.]  
*Item et quando in duello dicatur lis contestari ?*

Sextodecimo quæro, an provocans ad duellum desistere possit sine pœna ante litem contestatam, et, cum hoc, etiam quæro, quando, proportionaliter in iudicio contentioso, in duello lis dicatur contestari ? Et videtur quod ante sine pœna possit desistere. Nam ante litem contestatam non dicitur quis "agere," sed "agere velle," ut l. *amplius*, ff. Rat. rem haberi. Ergo ante desistere poterit. Confirmatur. Nam ante litem contestatam desistenti par-citur, ff. De in ius vocando, l. *quamvis*. Ergo. Confirmatur, per l. *sine metu*, C. De adulter. ; et ff., l. *miles*, § *socer*, eod. tit. ; et l. *quæsitum*, ff. Ad Turpilianum. In contrarium facit l. *in senatus*, § *qui post*, ff. Ad Turpilianum, ubi probat textus quod desistens ab accusatione ante litem contestatam incidat in Turpilianum. Idem probat l. *pœnult.*, C. De calumniatoribus.

Solutio. Hæc quæstio præsupponit alterius quæstionis decisionem, scilicet, quando lis proportionaliter contestari dicatur in hoc iudicio duellari. Et videtur quod post unam percussionem actoris, et aliam rei, quia in iudicio contentioso sic fit contestatio per petitionem et contradictionem secutam, ut l. *rem non novam*, § *patroni*, C. De iudiciis ; et Authent., *offeratur*, C. De litis contestat. ; et cap. uno, eod. tit., Extra. Sed prima percussio habetur loco libelli, secunda percussio, quæ fit a reo, est contradictio, ergo sic fit litis contestatio. Contrarium credo verum, scilicet, quod fiat litis contestatio, cum provocat, asserendo quod crimen commiserit, et ille negat. Quod hoc sit verum patet. Nam post litem contestatam præstatur iuramentum de calumnia, in Authent., *Vt litigantes iurent in exordio litis, in princip.* ; et l. ii, C. De [iuramento calumniæ] iureiurando propter calumniam. Sed duellantes, post hanc verbalem provocationem et contradictionem, iurant de astu, ut supra deductum est. Incipit ergo duellum a verbali proclamatione, sed percussuræ habentur, loco probationum per testes et instrumenta, quæ fiunt post litem contestatam, *Vt lite non contestata, per totum.* Et sic modifica solutionem quæstionis qua quæsi quis primo percutere debeat. Hac solutione præmissa, principalis quæstio incidit in quæstionem illam, an poena Turpiliani vindicet sibi locum ante litem contestatam. Et glossæ sunt contrariæ. Vna est in l. [si] *miles*, § *socer*, ff. De adulteriis, et fuit Hugolini, et tenet quod non incidat. Alia est in l. i, C. Ad Turpilianum, quæ tenet quod incidat, et fuit Azonis, et illam credo veram per l. *in senatus*, § *qui post*, ff. Ad Turpilianum ; et per Authent., *qui semel*, C. Quomodo et quando iudex. Tamen dicit Petrus quod accusator pænitere potest antequam reus citatus veniat ; sic intelligit l. *quæsitum*, ff. Ad Turpilianum. Et simili modo habetur solutio præmissæ quæstionis, loquendo de iure Lombardo, ut supra. Deo gratias.

Explicit tractatus De Bello compilatus per me, Iohannem de Lignano de Mediolano, minimum iuris utriusque doctorem, in studio Bononien-si, MCCCCLX, pendente forti exercitu contra civitatem, qui causam dedit tractatui, ut Scholaribus tunc causa foret exercitii, Doctorum autem subiceretur correctioni. Deo gratias. Amen.

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## TABVLA TRACTATVS

**T**Ractatus iste De Bello prima sui divisione dividitur in tres partes principales, quarum ultima in sex tractatus dividitur et subdividitur, prout tibi per tabulam istam clarius infra demonstrabitur, rubricellis suis suo ordine collocatis. [Cap. i.]

*Prima pars principalis.*

Quid sit Bellum, et qualiter describatur ?

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*Secunda pars principalis.*

[Cap. ii.]

De divisione Belli et qualiter dividatur.

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*Tertia et ultima pars principalis*

*ponit ordinem tractatum, et dividitur in sex principales tractatus.*

*Primus tractatus.*

De Spirituali Bello Cœlesti.

Qualiter Spirituale Bellum Cœleste est metrum et mensura Spiritualis Humani Belli.

De naturali deductione Spiritualis Belli corporum cœlestium ad bella terrestria.

Qualiter, secundum astrologos et naturales philosophos, necessario sit dare bellum.

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*Secundus tractatus.*

De Spirituali Humano Bello, secundum theologiam.

[Capp. iii-vi.]

De Spirituali Humano Bello, secundum moralem philosophiam.

[Capp. vii, viii.]

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*Tertius tractatus,*

[Cap. ix.]

*scilicet, De Vniuersali Corporali Bello,*

*et iste dividitur in sex tractatus.*

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[Cap. x.] *Primus tractatus, scilicet, quo iure introductum sit ?*

Qualiter iure divino ortum habuerit Bellum Vniversale Corporale ?

[Cap. xi.] Qualiter iure gentium ortum habuerit Bellum Vniversale Corporale ?

[Capp. xii-xiv.] *Secundus tractatus tertii principalis, scilicet, quibus liceat bellum indicere universale ?*

Quibus primo et principaliter, et quo iure, et contra quos, bellum indicere liceat universale ?

[Cap. xv.] An bellum motum per Imperatorem contra Ecclesiam sit iustum, et an teneantur subditi in hoc obtemperare ?

[Cap. xvi.] Quid econtra iuris sit, cum Papa, scilicet, movet bellum contra Imperatorem ?

[Cap. xvii.] *Tertius tractatus tertii principalis, scilicet, quæ sint aggregantia bellum ?*

De legione et cohorte, et qui et quot numero in eis requirantur ?

[Cap. xviii.] Qualiter milites se habere debeant in bello, et cui obediant, et a quibus abstinere præcipiuntur ?

[Cap. xix.] Quæ pertineant ad officium ducis belli ?

[Cap. xx.] Qualiter varie puniuntur milites, prout varie delinquant ?

[Cap. xxi.] De fortitudine, et ipsius natura, et quæ fortitudo dicatur moralis, et quæ non, et quæ bellum ducit ad finem rectum, et quæ non ?

[Cap. xxii.] An fortitudo sit virtus cardinalis ?

[Cap. xxiii.] Vnde et qualiter quatuor principales virtutes dicantur morales ?  
Quid sit virtus ?

[Cap. xxiv.] De triplici specie boni, et qualiter quatuor cardinales virtutes eliciantur a bono ?

[Capp. xxv, xxvi.] Quomodo et qualiter in bello quis possit dici fortis ?

[Cap. xxvii.] Quis sit principalior actus fortitudinis ?

Quot generibus fortitudinis quis utatur in bello ?

[Cap. xxviii.] An fortis in bello potius debeat mortem expectare quam fugere ?

[Cap. xxix.] An miles unacum comitiva sua viriliter in hostes prorumpens, et ipsos totaliter confringens, contra mandatum ducis, sit capite puniendus ?

[Cap. xxx.] An duci belli capto ab hostibus sit venia concedenda ?

*Quartus tractatus tertii principalis, et dividitur in duas sui principales partes.*

[Cap. xxxi.] *Prima pars, scilicet, qui teneantur ad bellum accedere ?*

An a domino, moto iusto bello, teneantur vassalli ad bellum accedere propriis expensis ?

[Cap. xxxii.] An subditi uni baroni moventi guerram contra regem suum, teneantur iuvare ipsum baronem contra regem ?



An subditi uni baroni, moventi guerram alteri baroni, teneantur ipsum primo, vel regem, moventem guerram alteri regi, iuvare utriusque mandato uno concursu recepto ? [Cap. xxxiii.]

An vassallus non legius duorum dominorum, utrumque vel alterum, et quem, iuvare teneatur ? [Cap. xxxiv.]

An vassallus teneatur iuvare dominum contra patrem, vel pater contra filium ? [Cap. xxxv.]

An civis duarum civitatum teneatur iuvare unam contra aliam ?

An vassallus vocatus a domino teneatur ipsum sequi in partibus ultramarinis, ad pugnandum contra barbaros ? [Cap. xxxvi.]

An servi teneantur ubique sequi dominum ad bellum ? [Cap. xxxvii.]

An liberti, vocati, teneantur sequi patronum ad bellum ? [Cap. xxxviii.]

An agricolæ, vocati, teneantur sequi dominum ad bellum ? [Cap. xxxix.]

An confœderatos, seu colligatos, possit dominus provocare ut ipsum iuvent in bello ? [Cap. xl.]

An subditi, ratione iurisdictionis tantum, teneantur ad bellum accedere ? [Cap. xli.]

*Secunda pars, scilicet, de personis non astrictis ad bellum libere accedentibus, et dividitur in sex principales partes.* [Cap. xlii.]

*Prima pars, scilicet, de libere accedentibus.*

An libere accedentes obligent sibi illum in cuius servitium vadunt, si damnum inde patiantur ?

An commodatarius teneatur commodanti equos et arma in bello deperdita resarcire. [Cap. xliii.]

An conductor teneatur locatori equos et arma in bello deperdita resarcire ? [Cap. xlii.]

An provocans contra spoliatores provocati, ad bellum accedentes, aget vi bonorum raptorum, vel furti ? [Cap. xlv.]

An non vocati, sed proprio motu accedentes, ad bellum obligent sibi illum in cuius servitium vadunt ? [Cap. xlvii.]

An non vocati, sed proprio motu ad bellum accedentes, et utiliter proficientes, obligent sibi illum renitentem et contradicentem in cuius servitium vadunt ? [Cap. xlviii.]

*Secunda pars de accedentibus, quia tenentur ad antidota.* [Cap. xlviii.]

An talis agat contra illum quem iuvat ?

*Tertia pars de accedentibus propter gloriam consequendam.* [Cap. xlix.]

An tales obligent sibi illum in cuius subsidium vadunt ?

*Quarta pars de accedentibus, quia locant operas suas.* [Cap. l.]

An tales agant contra conductores ?

[Cap. li.]

*Quinta pars de accedentibus animo spoliandi.*

An talibus actio competat ?

[Cap. lii.]

*Sexta pars.*

An clerici ad bellum accedere possint ?

An stipendiarii in Alamania, constituto salario per conducentem, agant contra eum, qui dum venirent, amisit totaliter statum suum ?

[Cap. liii.]

An stipendiarii assumpti de Alamania per civitatem Italicam, constituto salario per annum, qui dum venirent, civitas violenter occupata est per tyrannum, agant ad salarium in totum, aut pro rata, vel ad quid ?

[Cap. liiv.]

An quando solvi debeat stipendiariis, an, scilicet, in principio cuiuslibet mensis, an in fine ?

[Cap. liv.]

An stipendiarii se absentantes, etiam de licentia domini, aliquo tempore, perdant salarium pro illo tempore ?

[Cap. lvi.]

An si stipendiarii culpa sua servire nolint toto tempore firmæ suæ, perdant stipendium totius temporis, an tantum pro tempore quo non servierint ?

[Cap. lvii.]

An stipendiarius servire possit per substitutum ?

[Cap. lviii.]

An stipendiarius perdat stipendium tempore quo infirmatur ?

[Cap. lix.]

*Quintus tractatus tertii principalis, scilicet, de spoliis et capturis quæ fiunt in bello.*

An aliquid capiens in bello efficiatur dominus personæ captæ et rei, et an sit locus postliminio ?

[Cap. lx.]

An capti in bello duarum civitatum efficiantur servi, et dominium eorum quærat ?

[Cap. lxi.]

An capta in bello efficiantur capientium ?

[Cap. lxii.]

An in bellis licitum sit insidiis uti ?

[Cap. lxiii.]

(Desunt hic verba "an in festis licitum sit bellare ?".)

[Cap. lxiv.]

An consecutus in bello totum suum interesse, possit iterum adversarium in iudicio convenire, vel bellum iterato contra eum indicare ?

[Cap. lxv.]

An morientes in bello salventur ?

[Cap. lxvi.]

An pro rebus et possessionibus Ecclesiæ corporali bello bellare liceat, et super hoc milites convocare ?

[Cap. lxvii.]

An liceat episcopis ad bellum accedere sine licentia Papæ ?

[Cap. lxviii.]

An prælati pro temporalibus, quæ tenent ab Imperatore, teneantur solve tributum pro bellis ab eo indictis ?

[Cap. lxix.]

An captis in bello iusto sit miserendum ?

[Cap. lxx.]

An Ecclesia bellum debeat indicare Iudæis ?

[Cap. lxxi.]

An degentes in bello, qui pugnare non possunt, gaudeant immunitatibus bellantium ?

[Cap. lxxii.]

An liceat prælatis ratione temporalis iurisdictionis bella indicare, et eis interesse, et ad bellandum alios hortari ?



An liceat prælato, pro iniuria subditi sui impunita, bellum indicere, et alios quam iniuriantes capere ? [Cap. lxxiii.]

An delegatus Papæ possit indicere bellum, id est, invocare brachium sæculare ? [Cap. lxxiv.]

An bella indicta per Ecclesiam contra excommunicatos sint meritoria ? [Cap. lxxv.]

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*Sextus et ultimus tractatus tertii principalis per modum tabulæ, scilicet, quot sint genera bellorum corporalium de quibus reperitur in iure expressum ?* [Cap. lxxvi.]

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*Quartus tractatus tertii principalis, scilicet, De Bello Particulari quod fit ob tutelam sui, et dividitur in octo sui partes principales.* [Cap. lxxvii.]

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*Prima pars.*

Quid sit particulare bellum ? [Cap. lxxviii.]

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*Secunda pars.*

Quot sint species particularis belli ? [Cap. lxxix.]

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*Tertia pars.*

Quo iure inductum sit particulare bellum ? [Cap. lxxx.]

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*Quarta pars,*

*scilicet, Quibus liceat hoc particulare bellum indicere ?* [Cap. lxxxi.]

An clericis competat hoc bellum indicere ? [Cap. lxxxii.]

An cum liceat clerico se defendere, etiam occidendo, hoc sibi liceat in ecclesia ? [Cap. lxxxiii.]

An liceat clerico celebranti in vaso se defendere et occidere, et si sic continuato officio celebrare ? [Cap. lxxxiv.]

An baptizanti, inungenti, confirmanti, ordinanti, et singula sacramenta conferenti invasis, licitum sit collationem illorum postponere inchoatam ? [Cap. lxxxv.]

An præligenda sit mors<sup>o</sup> invasi sacerdotis, cum puerum in mortis articulo baptizat, an vita æterna ipsius pueri, ne sine baptismo decedat ? [Cap. lxxxvi.]

An monacho liceat se defendere sine licentia abbatis sui ? [Cap. lxxxvii.]

An servo liceat se defendere sine iussu domini sui ? [Cap. lxxxviii. bis.]

An bannitis, qui quandoque per leges municipales occidi impune possunt, liceat se defendere ? [Cap. lxxxviii.]]

[Cap. lxxxix.]

*Quinta pars,**scilicet, Contra quos liceat hoc particulare bellum indicare ?*

An liceat contra superiorem suum ?

[Cap. xc.]

An contra iudicem, etiam si iniuste aliquid agat ?

[Cap. xci.]

An filio contra patrem ?

[Cap. xcii.]

An monacho contra abbatem ?

[Cap. xciii.]

An servo contra dominum ?

[Cap. xciv.]

*Sexta pars,**scilicet, Pro quibus liceat hoc particulare bellum indicare,  
et dividitur in duas sui partes principales.**Prima pars, scilicet, pro quibus personis liceat ?*

[Cap. xcv.]

An liceat patri pro filio ?

[Cap. xcvi.]

An marito pro uxore ?

[Cap. xcvi.]

An pro fratre, sorore, et aliis coniunctis personis ?

[Cap. xcvi.]

An quis teneatur quem defendere ne ab alio occidatur ?

[Cap. xcix.]

An vassallus teneatur iuvare dominum suum ?

[Cap. c.]

An servus teneatur defendere dominum suum ?

[Cap. ci.]

An miles teneatur defendere præpositum suum ?

[Cap. cii.]

An vassallus videns dominum invasum ex una parte, patrem ex alia, utrumque pariter in mortis articulo nisi iuventur, nec iuvare potest nisi alterum, quæritur quem iuvabit ?

[Cap. ciii.]

Quid iuris, eodem themate retento, in clerico, qui videns episcopum suum invasum ex una parte, patrem ex alia, utrumque pariter in mortis articulo nisi iuventur, nec iuvare potest nisi alterum, quæritur quem iuvabit ?

[Cap. civ.]

*Secunda pars, scilicet, pro quibus rebus liceat ?*

An liceat pro rebus iuste possessis ?

[Cap. cv.]

An pro iniuste possessis ?

[Cap. cvi.]

An et si liceat res defendere, defendens etiam cum moderamine inculpatæ tutelæ, si occidat vel mutilet, irregularitatem incurrat ?

[Cap. cvii.]

An, pro rebus suis defendendis contra clericum, excommunicationem incidat manus iniciendo ?

[Cap. cviii.]

An pro rebus defendendis vocatis amicis licitum sit subsidium impendere ?

[Cap. cix.]

An pro rebus defendendis licitum sit sic contra omnes vim vi repellere, sicut contra quos licitum est pro personis ?

[Cap. cx.]

An pro rebus depositis vel commodatis liceat vim vi repellere ?

*Septima pars,*

[Cap. cx.]

*scilicet, Qualiter liceat hoc particulare bellum indicare ?*

An liceat cum moderamine inculpatæ tutelæ ?

Quid sit moderamen inculpatæ tutelæ, et quæ in eo requirantur ?



An liceat vili et debili cum ense se defendere contra fortem et robustum [Cap. cxii.]  
pugno tantum percutientem ?

An et si liceat incontinenti se defendere, qualiter intelligatur illud [Cap. cxiii.]  
“ incontinenti ” ?

Qualiter intelligatur æquivalentia in ipso actu violento ? [Cap. cxiv.]

An vindicasse videar, non defendisse, si spoliatores meos de possessione mea expuli, qui ante satisfacere volebat de possessione restituenda. [Cap. cxv.]

An paratum ad me percutiendum expectare debeam, vel eum prævenire ? [Cap. cxvi.]

An miles quem vicinus aggreditur censeatur vim vi repellere, si expectet et percutiat, cum tamen alias fugere posset ? [Cap. cxvii.]

An si vulneratus post vulnera insequatur vulnerantem, et ipsum percutiat, quod tamen non licet, puniri debeat ut dolosus, vel ut culpabilis ? [Cap. cxviii.]

An violentia illata personæ possit per amicos propulsari sicut illata rebus ? [Cap. cxix.]

An serviens, de mandato domini sui, uxorem ipsius interficiens, excusetur ? [Cap. cxx.]

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*Octava et ultima pars quarti tractatus tertii principalis.* [Cap. cxxi.]

Quis sit finis particularis belli ?

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*Quintus tractatus tertii principalis,* [Cap. cxxii.]

*scilicet, De Particulari Bello quod fit ad defensam mystici corporis, quod*

*“ Represaliæ ” nuncupatur,*

*et dividitur iste tractatus, prima sui divisione, in duas partes principales.*

*Prima pars ponit unde, et a quo, ortum habuerunt represaliæ ?* [Cap. cxxiii.]

*Secunda pars, scilicet, de causis represaliarum. De causa productiva sive efficiente represaliarum.* [Cap. cxxiv.]

*Tertia pars, scilicet, de causa materiali, et dividitur in quatuor partes principales.* [Cap. cxxv.]

*Prima pars, scilicet, de materia in qua.*

Quid sit materia in qua ?

Quid sit materia circa quam ?

Quid sit materia contra quam ?

Quid sit materia ex qua ?

Quibus personis concedatur facultas represaliandi ?

An incolis represaliæ concedantur ?

An civibus non subiectis iurisdictioni civitatis, et alias non facientibus factiones, sint indicendæ represaliæ ? [Cap. cxxvi.]

[Cap. cxxvii.] An civi per conventionem concedantur represaliæ contra civitatem originis ?

[Cap. cxxviii.] An civibus, et habitis pro civibus, limitatæ tamen, represaliæ concedantur ?

[Cap. cxxix.] An civibus unius civitatis, qui pacto vel statuto tractantur ut cives alterius civitatis, per eandem concedi possint represaliæ ?

[Cap. cxxx.] *Secunda pars, scilicet, de materia circa quam.*

An contra res eorum qui capi non possunt vigore represaliarum possint indici represaliæ ?

[Cap. cxxxi.] An represaliæ, simpliciter indictæ, exerceri possint contra bona existentia in territorio civitatis contra quam sunt indictæ, ut capiantur et reducantur intra territorium civitatis indidentis ?

[Cap. cxxxii.] An si una civitas indicat represalias contra aliam, possit rector civitatis indidentis, scribendo rectori civitatis contra quam, exercere represalias in res ibi situatas ?

[Cap. cxxxiii.] *Tertia pars, scilicet, de materia contra quam.*

An represaliæ indictæ per unam civitatem contra homines alterius civitatis, exerceri possint contra incolas illius civitatis ?

[Cap. cxxxiv.] An represaliæ, indictæ per unam civitatem contra homines alterius civitatis, exerceri possint contra homines illius civitatis alibi morantes ?

[Cap. cxxxv.] An represaliæ exerceri possint contra cives vel incolas unius civitatis, onera subeuntes eiusdem, qui etiam sint cives alterius civitatis ?

[Cap. cxxxvi.] An contra mulieres exerceri possint represaliæ ?

[Cap. cxxxvii.] An contra clericos non coniugatos, item et an contra coniugatos, exerceri valeant represaliæ ?

An episcopo, negligente de clericis suis iustitiam facere, nec haberi possit recursus ad superiorem, possint indici represaliæ contra clericos eosdem per iudicem sæcularem ?

[Cap. cxxxviii.] An contra Bononienses, vel etiam alios studentes Bononiæ, euntes Paduam pro studio, exerceri possint represaliæ ?

[Cap. cxxxix.] An contra ambasciatores exerceri possint represaliæ ?

[Cap. cxli.] An contra euntes ad nundinas, ad Sanctum Iacobum, vel ad alium locum indulgentiæ, item an contra navigantes, et an contra illos qui in ius vocari non possunt, et in multis aliis casibus, exerceri valeant represaliæ ?

[Cap. cxlii.] An contra Bononiensem potestatem, Mediolani ibi iniustitiam facientem, possint represaliæ concedi ?

[Cap. cxliii.] An contra officiales potestatis vel rectoris, iniustitiam facientes, possint represaliæ indici ?

[Cap. cxliiii.] An contra consules, priores, civitatis, iustitiam facere denegantes, possint indici represaliæ ?

[Cap. cxliv.] An contra singulares personas, penitus innocentes, propter delictum domini, vel alterius privati, de quo non fit iustitia, indici possint represaliæ ?



An contra homines, quoad quid tantum, non autem plene, uni civitati subditos, indici possint represaliæ? [Cap. cxlv.]

An contra certum genus hominum, facere iustitiam denegantium, indici possint represaliæ? [Cap. cxlvi.]

*Quarta pars, scilicet, de materia ex qua, quæ insurgit ex defectu iurisdictionis, quia primo requiri debet iudex antequam represaliæ concedantur.* [Cap. cxlvii.]

An requiri debeat iudex ut iustitiam faciat antequam represaliæ concedantur? [Cap. cxlviii.]

An iudex iniuriam patientis, qui non audet litigare in civitate iniuriam inferentis, possit scribere, ut in alios iurisdictionem prorogent, vel arbitros eligant? [Cap. cxlix.]

Quis iudex requiri debeat ut iustitiam faciat? [Cap. cli.]

Qualis iniustitia requiratur, ut represaliæ indicantur? [Cap. cli.]

Quando dicatur non posse haberi copia superioris, ut locus sit represaliarum indictioni? [Cap. clii.]

*Quarta pars principalis, scilicet, de causa formali, et dividitur in duas partes principales.* [Cap. cliii.]

*Prima pars, scilicet, de forma indicendarum represaliarum.*

Quis comparere possit ad hoc, ne indicantur represaliæ? [Cap. cliv.]

Qualitèr constabit de iniustitia facta, vel ea denegata? [Capp. clv, clvi.]

An si aliqua capiuntur vigore represaliarum, detineri valeant, ex primo decreto, an secundo? [Cap. clvii.]

*Secunda pars, scilicet, de forma exercendi represalias.* [Cap. clviii.]

An liceat illi cui sunt concessæ represaliæ, auctoritate propria, vel per ministros concedentis, exerceri?

An personas et res captas teneatur capiens iudici præsentare, vel sibi retinere? [Cap. clix.]

An res captæ vigore represaliarum vendantur, vel in solutum accipiantur, vel æstimentur? [Cap. clx.]

An diebus feriatis possint represaliæ exerceri? [Cap. clxi.]

An, si quis vult se defendere, vel res captas, qualis cognitio adhibeatur? [Cap. clxii.]

An exacto competat regressus, contra illum propter cuius debitum vel delictum exactus est? [Cap. clxiii.]

An exacto succurratur contra rectorem sicut contra debitorem principalem? [Cap. clxiv.]

An captus vigore represaliarum possit, auctoritate propria, homines illius civitatis capere in qua captus fuit? [Cap. clxv.]

An per statuta represaliæ concedi possint in casibus aliter a iure non permissis? [Cap. clxvi.]

An statutum civitatis quo cavetur quod filius teneatur pro patre delinquente possit exerceri contra filium existentem extra territorium civitatis condentis ?

[Cap. clxvii.] An per pactum possit licite fieri quod unus teneatur pro alio ?

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[Cap. clxviii.] *Sextus et ultimus tractatus tertii principalis huius operis, scilicet, De Particulari Bello quod fit ad purgationem, quod " Duellum " nuncupatur, et dividitur, prima sui divisione, in septem partes principales.*

*Prima pars.*

[Cap. clxix.] Quid sit Duellum ?

[Cap. clxx.] *Secunda pars, scilicet, quot sint species Duelli ?*

Qualiter duellum fit propter odii exaggerationem ?

Qualiter fit duellum propter gloriam in publico consequendam ?

Qualiter fit duellum propter purgationem alicuius criminis iniuncti ?

[Cap. clxxi.] *Tertia pars, scilicet, quo iure sit inductum et quo inhibitum ?*

Qualiter duellum, quod fit propter odii exaggerationem sit inductum iure naturali, sumpto pro instinctu naturæ, proveniente ex sensualitate ad aliquid appetendum ?

[Cap. clxxii.] Qualiter duellum, quod fit propter odii exaggerationem, sit inhibitum iure naturali, sumpto pro rationabili intelligentia, et sic iure gentium et divino, canonico et civili ?

[Cap. clxxiii.] Qualiter duellum, quod fit propter gloriam, sit inductum iure naturali, sumpto pro instinctu naturæ ex sensualitate proveniente ?

[Cap. clxxiv.] Qualiter duellum, quod fit propter gloriam, sit inhibitum iure divino ?

Qualiter duellum, quod fit propter gloriam, sit inhibitum iure gentium ?

Qualiter duellum, quod fit propter gloriam, sit inhibitum de iure canonico et civili ?

[Cap. clxxv.] *Quarta pars, scilicet propter quid duellum purgatorium sit permissum, et propter quid prohibitum ?*

Qualiter duellum purgatorium inhibitum sit iure divino ?

Qualiter duellum purgatorium inhibitum sit iure gentium ?

Qualiter duellum purgatorium inhibitum sit iure canonico ?

Qualiter duellum purgatorium sit inhibitum regulariter iure civili ?

[Cap. clxxvi.] *Quinta pars, scilicet, in quibus casibus permittatur duellum purgatorium ?*

Qualiter duellum iure Lombardo in viginti casibus permittatur ?

[Cap. clxxvii.] *Sexta pars, scilicet, inter quos iniri possit duellum ?*

Qualiter duellum purgatorium inter principales regulariter fieri debeat ?



*Septima et ultima pars, scilicet, qualiter fiat duellum.*

[Cap. clxxviii.]

Qualiter duellum purgatorium ad instar sit iudicii contentiosi ?

An iuramentum de astu inter duellantes sit præstandum, et per quem ? [Cap. clxxix.]

An uni parti campione dato, in casibus a iure permissis, liceat etiam alteri parti dare campionem ? [Cap. clxxx.]

Qualiter, in casibus hinc inde, cum campio conceditur, fiet ipsorum datio et concessio ? [Cap. clxxxi.]

An quilibet admittatur pro campione ? [Cap. clxxxii.]

In cuius electione sit duellum ? [Cap. clxxxiii.]

Qualiter ordinetur duellum ? [Cap. clxxxiv.]

Quibus armis duellari debeat ? [Cap. clxxxv.]

An, si arma seu fustes unius duellantium frangantur, vel cadant, debeant alia dari ? [Cap. clxxxvi.]

Quis duellantium prius percurrere debeat ? [Cap. clxxxvii.]

An duellum, prima die non finitum, sequenti die terminari possit ? [Cap. clxxxviii.]

An in duello succumbens in expensis condemnatur ? [Cap. clxxxix.]

An provocans in duello, succumbens, puniatur poena talionis ? [Cap. cxc.]

An provocatus ad duellum propter crimen, succumbens et condemnatus, possit de eodem crimine accusari in iudicio contentioso ? [Cap. xcxi.]

An provocans ad duellum propter crimen publicum, desistens a duello, incidat poenam Turpiliani ? [Cap. xcxi.]

An provocans ad duellum iure Lombardo possit de iudicis licentia desistere ? [Cap. xcxi.]

An provocans ad duellum possit, sine poena, ante litem contestatam desistere, item an, et quando, in duello dicatur lis contestari ? [Cap. xciv.]

Explicit Tabula super libello tractatus De Bello Domini Iohannis  
de Lignano. Deo gratias. Amen. Amen. Amen.





THE TRACTATUS DE BELLO  
Of Giovanni da Legnano

Translated from the preceding extended text  
by

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HERE BEGINS THE TREATISE ON WAR OF GIOVANNI DA LEGNANO  
OF MILAN, DOCTOR OF THE CANON AND OF THE CIVIL LAW.

"The King of Israel changed his raiment and entered into war," 1 Kings, ch. xxii. Israel is the throne of the Lord, and, as it is written in Jeremiah, ch. iii, "they shall call Israel the throne of the Lord." And this is the patrimony of the Holy Roman Church, whose head is Jerusalem, this kindly city of Bologna, which may truly be called Jerusalem. For in her is manifested the truth of all things knowable, and especially of law. Of her it is written in Zechariah, ch. viii, "Jerusalem shall be called a city of truth." She is "comely as Jerusalem," Song of Solomon, ch. vi. Of her also the Prophet exclaims in Zephaniah, ch. i, "I will search Jerusalem with candles"; and in Acts, ch. v, "ye have filled Jerusalem with your doctrine." Of her also it is written in Revelation, ch. xxi, "I saw the holy city, Jerusalem"; and in the same chapter, "he shewed me the city, the holy Jerusalem, descending out of heaven," to wit, Bologna. And truly she has descended out of heaven, since there is the fountain of truth, of the laws which indeed are promulgated by the mouths of princes, dist. viii, *quo iure*; C. De longi temporis præscriptione, the last law. Of her the Apostle writes to the Hebrews, in ch. xii, "the city of the living God, the heavenly Jerusalem." And the same Apostle, in Galatians, ch. iv, says, "But Jerusalem which is above is free." Of her also it is written in 2 Chronicles, ch. vi, "I have chosen Jerusalem, that my name might be there."

But with the permission of the Most High and by the disposition of the heavenly bodies, this city of Bologna, like Jerusalem, has been utterly changed and devastated, and for the innumerable offences of her inhabitants, and their mutual hatreds, the Most High has long threatened her destruction, as it is written in 2 Kings, ch. xxi, "I will wipe Jerusalem as a man wipeth a dish." Of the conspiracy of the inhabitants it is written in 2 Chronicles, ch. xxv,\* "a conspiracy descended on Jerusalem." And because of the pride of the inhabitants the Lord threatened by the mouth of his Prophet, saying, "I will mar the pride of Judah and the great pride of Jerusalem," Jeremiah, ch. xiii. And because of this pride the Prophet exclaims against her inhabitants, saying, "I will make Jerusalem heaps of sand." And in another place a Prophet exclaims because of this, saying, "I will make Jerusalem as an heap of stones," Micah, ch. i. And because of this a Prophet exclaims against those that were nursed in her, saying, "ye grieved Jerusalem, that nursed you," Baruch, ch. iv.

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\* At the end, "they made a conspiracy against him in Jerusalem."

And because of this, that is, because of the excesses of the inhabitants, it came to pass that the armies of the King of Babylon besieged Jerusalem, Jeremiah, ch. xxii. And because of this, that which is written in Ezekiel, ch. v, came to pass, "This is Jerusalem in the midst of the nations," that is, in the midst of her enemies. By way of penalty there has come to pass also that which is written in Lamentations, ch. i, "Jerusalem has become as a woman defiled."

Therefore the kindly city of Bologna is rightly called Jerusalem, and the head of the throne, that is of the patrimony, of the Holy Mother Church. But the king who in fact rules and governs her is the Most Reverend Father and lord in Christ, the lord Egidio, by divine compassion Bishop of Sabina. For he changed his raiment and entered into war. For he was appointed from the throne of peace, that is, from the most sacred College of Cardinals, and from the right hand of the most holy Pope Innocent VI, for the recovery of Jerusalem, that is, of the patrimony which had been utterly lost; and in its recovery he changed his raiment. For he left the pontifical peace and entered into war, into strong war like a most serene prince. For before him there was no king in Jerusalem; as it is written in Judges, ch. xxi, "in those days there was no king." And for that reason the Lord said to him, that is, to the lord Egidio, "I have sent thee to rule over the people of the Lord," Judges, ch. ix<sup>o</sup>. And he himself may say, "the Lord chose me to be king," 1 Chronicles, ch. xxviii. "And the Lord set him as king over all Israel," 1 Chronicles, ch. xii<sup>o</sup>. And "the king arose from the throne of the Lord," Jonah, ch. iii. And he entered into war well and prosperously. For like one borne on the two wings of highest wisdom and illustrious bravery, he brought all the rights of the Holy Roman Church, which had been tyrannically usurped, from nothingness into existence, from darkness to light, so that it may be said that he has created something out of nothing, Genesis, ch. i; and *C. De rei uxoriæ actione*, the single law, at the beginning. Truly, therefore, like the King of Israel, he has changed his raiment and entered into war.

Because, therefore, the King of Israel, that is of the patrimony, and above all of the city of Bologna, which is indeed the head of the patrimony, and which, as was shown above, was brought from extremity to extremity, changed his raiment and entered into war, and this war is in our own days, and is even still pending, it would seem somewhat unfitting to pass it over in complete silence.

So therefore I, Giovanni da Legnano of Milan, the least of all doctors of the canon and civil law, have conceived a treatise to be dedicated to you, the Most Reverend Father in Christ and my lord Egidio, by divine compassion Bishop of Sabina in the parts of Italy, Vicar General for the Holy Roman Church, and true King of Jerusalem, concerning Jerusalem, that is, the city of Bologna, and concerning the war into which, changing your raiment, you entered, in the following order. I shall set forth six cases touching the city of Bologna, which have keenly concerned that city, from the year of our Lord 1350 up to 1360, especially those wherefrom a change of government arose,



together with the marks of the seasons and the aspects of the years about noon-time of the days on which these things befell, but not the aspects of the hours. And I add these things because I intend in some treatises to exceed the bounds of law, explaining some things which will perchance happen; and to each case I shall devote one treatise or more, as occasion demands. Some treatises I shall pass over in silence, others I shall explain in detail. I shall publish one only at the present time, a treatise on War, promising, if the Lord will, to expand and deliver them severally at a fitting time, and when the cause of the prohibition ceases, and praying the same Most Reverend Father to deign to overlook the poverty of my intellect, and to accept this poor exordium, to be corrected and reformed as it shall please you, according to the authority of the Wise Man of the Gentiles, "a poor gift," &c. I pass, then, to my subjects; and I shall set them forth from the cause in a figure.

While Jupiter the key-bearer, the Sixth bearer of clemency,<sup>2</sup> was sitting on the seat of the fisherman, Mars<sup>3</sup> by his command hastily approached, that he might freely enter into the green and flowery pasture<sup>4</sup> of Taurus. This was in the year of our Lord 1350, on the 8th day of July. The Sun was then in Cancer, 23° 32'; the Moon was with Leo, 28° 21'; the Head of Draco was in Gemini, 26° 9'; Saturn was in Aries, 26° 32'; Jupiter with Cancer, 28° 51'; Mars in Libra, 11° 18'; Venus was retiring in Cancer, 29° 20'; Mercury was following Venus in Cancer, 9° 10'. And then the tallest of the sons of Saturn,<sup>5</sup> bearing a circlet<sup>6</sup> from Jupiter,<sup>7</sup> full of vipers within, with three tall vipers<sup>8</sup> springing from his sides, descending from the north on the intercession of Mercury,<sup>9</sup> came with Mars into the pasture, and was chosen perpetual shepherd of the Taurine herd, that is to say, was elected lord. And this was in the year of our Lord 1350, on the 24th day of October, the Sun . . . ; the Moon in Cancer, 9° 50'; Saturn in Aries, 22° 19'; Jupiter in Leo, 18° 13'; Mars in Sagittarius, 23° 32'; Venus in Virgo, 25° 20'; Mercury in Libra, 21° 25'; the Head of Draco in Gemini, 20° 19'; his Tail, &c.

After a lapse of time, by the working of the clemency<sup>10</sup> of Jupiter, and of the circlet<sup>11</sup> which the son of Saturn had received from him, it came to pass that the son of Saturn received<sup>12</sup> Jupiter in the meadow with words, and recognized him as the first shepherd of the herd. This was in the year of our Lord 1352, on the 7th day of September; the Sun in Virgo, 23° 10'; the Moon in Virgo, 2° 30'; the Head in Taurus, 14° 17'; Saturn in Taurus, 24° 27'; Jupiter

<sup>2</sup> i. e., in the reign of Pope Clement VI.

<sup>3</sup> i. e., the army of the Count of the Romagna for the Church.

<sup>4</sup> i. e., Bologna.

<sup>5</sup> i. e., the Archbishop of Milan.

<sup>6</sup> i. e., the priestly dignity.

<sup>7</sup> i. e., the Pope.

<sup>8</sup> i. e., his three nephews, Matteo, Bernabo, and Galeazzo.

<sup>9</sup> i. e., Giovanni da Pepoli.

<sup>10</sup> i. e., Pope Clement.

<sup>11</sup> i. e., the priestly dignity.

<sup>12</sup> i. e., the Archbishop recognized the Pope as lord.

in Virgo,  $29^{\circ} 17'$  ; Mars in Sagittarius,  $6^{\circ} 20'$  ; Venus in Virgo,  $2^{\circ} 8'$  ; Mercury in Libra,  $27^{\circ} . . .'$ .

Now, behold, in this short time Taurus contracted a triple wedlock, and blushed not, his spouse still living, to break forth into illicit desire now for this and now for that one, so that there may be said of you that which is written in Isaiah, ch. i, " How is the faithful city full of judgement become an harlot ! Righteousness lodged in it, but now murderers. Thy silver is become dross, thy wine mixed with water. Thy princes are rebellious, and companions of thieves. Every one loveth gifts, and followeth after rewards. They judge not the fatherless, neither doth the cause of the widow come unto them. Therefore saith the Lord, the Lord of hosts, the mighty One of Israel, Ah, I will ease me of mine adversaries, and avenge me of mine enemies ; and I will turn my hand upon thee, and purely purge away thy dross, and take away all thy tin ; and I will restore thy judges as at the first, and thy counsellors as at the beginning : afterward thou shalt be called the city of righteousness." So it happens and will happen concerning thee, O Taurus, when the semicircle shall become tripartite, peace arise, and motion flow ; age resists, but a youth of vices brings this to pass.

To this case I devote three treatises : one on Mars, that is on War, and this I publish ; another on Jupiter, that is on the Church, and its government by its pastors, and by the aspects mentioned, showing what is the issue of its prosperity and adversity, and especially in regard to this present time, of the patrimony ; another on Saturn, that is on the Empire and its government by the rulers of to-day, and what is the issue of its prosperity and adversity, especially in regard to ecclesiastical and temporal rule in Italy, although in some ways these things pass the bounds of law. The last two, however, I do not publish at present, as I said before, until the urgent reason ceases.

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### *Second Case.*

After this, when the son of Saturn had been consumed with fire<sup>13</sup> and the three vipers<sup>14</sup> above mentioned had been raised up, bearing Saturn of the eagles<sup>15</sup> also in the centre of their heart, and ascending the throne of him who had been consumed,<sup>16</sup> they were received indivisibly as shepherds into the pasture.<sup>17</sup> This was in the year of our Lord 1354, on the 11th day of October. At that time the Sun was in Libra,  $26^{\circ} 22'$  ; the Moon . . . with Leo,  $16^{\circ} 45'$  ; Draco was covering his Head in Aries,  $3^{\circ} 58'$  ; Saturn was in Gemini,  $23^{\circ} 24'$  ; Jupiter was in Libra,  $22^{\circ} 17'$  ; Mars in Capricorn,  $25^{\circ} 4'$  ; Venus was wantoning in Scorpio,  $16^{\circ} 14'$  ; Mercury in Scorpio,  $11^{\circ} 46'$  ; Draco was covering his Head in Taurus,  $3^{\circ} 59'$ .

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<sup>13</sup> i. e., the Archbishop being dead.

<sup>14</sup> i. e., his nephews.

<sup>15</sup> i. e., the imperial eagle.

<sup>16</sup> i. e., succeeding the Archbishop.

<sup>17</sup> i. e., as lords of Bologna.



After a little time, the lot was cast for the inheritance<sup>18</sup> of him who had been consumed with fire, and the elder of the vipers<sup>19</sup> was raised alone into the pasture. Here I give no mark, because I do not regard it as important for what follows. After this, Mercury,<sup>20</sup> fearing he might be utterly exterminated by the vipers, was taken within the pasture as a shepherd. See now how, in this short space of time, Taurus, raging in wantonness, blushed not to contract another triple wedlock. And because thou didst so rage in the wantonness of manifold concubinage, and therein didst exceed all wantonness that admits of expiation, the Lord rained upon thee brimstone and fire from the Lord out of heaven, and overthrew thee, and all the region over against thee and the inhabitants, and all the green things which grew upon the ground, as it is written in Genesis, ch. xix. When a straight line shall be semicircular, then that which is crooked shall be made straight for thee. Now this was in the year of our Lord 1355, on the 17th day of April. The Sun was in Taurus, 5° 7'; the Moon in Gemini, 28° 31'; the Head in Pisces, 23° 49'; Saturn in Gemini, 20° 17'; Jupiter in Sagittarius, 22° 15'; Mars in Gemini, 5° 21'; Venus in Taurus, 27° 19'; Mercury in Aries, 11° 22'.

To this second case I append treatises on temporal dominion throughout the world under the Empire, treating of its origin, its species, division, succession, mode of government, and conservation; explaining each single government, from the lowest to the highest, in the whole world, beyond the bounds of law; explaining how the governments of the world vary according to the variety of its climates, and how in the same climates the governments of the world vary with the varied motions and aspects of superior bodies, for sometimes they are tyrannies, sometimes democracies, sometimes natural principalities; using common and popular language, in order that in the prosecution of this treatise I may follow the subject to its farthest limits.

### *Third Case.*

After this the elder viper<sup>21</sup> vanished, and Mercury<sup>22</sup> recognized the next<sup>23</sup> in the pasture. This was in the year of our Lord 1355, on the 27th day of September; the Sun was leaping with Capra, 14° 46'; the Moon was being bitten by Scorpio, 23° 31'; the Head of Draco was in Pisces, 10° 19'; Saturn was with Cancer, 2° 45'; Jupiter was grazing with Capra, 7° 33'; Mars was bearing the bite of Scorpio, 21° 41'; Venus was with Capra, 1° 53'; Mercury was preceding Venus over Capra, 18° 55'. And now, behold, O shameless

<sup>18</sup> i. e., the dominion of the Archbishop was divided.

<sup>19</sup> i. e., the lord Matteo.

<sup>20</sup> i. e., Giovanni, lord of Olegio, fearing death.

<sup>21</sup> i. e., the lord Matteo died.

<sup>22</sup> i. e., the lord Giovanni del Olegio.

<sup>23</sup> i. e., the lord Bernabo.

Taurus, thou didst not blush at once to contract another new wedlock, but soon afterwards the spouse was given a bill of divorcement,<sup>24</sup> O. revolved to A. and returned with Mercury.<sup>25</sup> And this was in the year of our Lord 1356, on the 11th day of February; at which time the Sun was in Pisces,  $7^{\circ} 57'$ ; the Moon was in Gemini,  $17^{\circ} 56'$ ; the Head of Draco was filled with Pisces,  $8^{\circ} 9'$ ; Saturn was withdrawing with Cancer,  $0^{\circ} 44'$ ; Jupiter was leaping with Capra,  $16^{\circ} \dots'$ ; Mars was bearing the Arrow,  $18^{\circ} 64'$ ; Venus was sprinkling Aqua,  $24^{\circ} 58'$ ; Mercury was in Pisces,  $0^{\circ} 38'$ . It seemed shameful for Taurus . . . two spouses at the same time. . . . It had been better for him to endure the two together . . . than to wander through so many illicit unions. And because thou didst so wander, there shall happen to thee that which is written, "the Lord shall bring a nation against thee from far, from the end of the earth, as swift as the eagle flieth; a nation whose tongue thou shalt not understand; a nation of fierce countenance, which shall not regard the person of the old, nor shew favour to the young: and he shall eat the fruit of thy cattle, and the fruit of thy land, until thou be destroyed: which also shall not leave thee either corn wine, or oil, or the increase of thy kine, or flocks of thy sheep." Thus spake the Lord to His disobedient people, as it is written in Deuteronomy, ch. xxviii. When four shall be resolved into three, then shall that which is fixed for thee become movable.

To this case I append treatises on the grant and recognition of temporal dominion, explaining the various modes according to the variety of dominions, and of those who grant and receive them.

#### *Fourth Case.*

After this, while the marriage of Mercury with Taurus<sup>26</sup> was subsisting, the flowers and greenness of the Taurine pasture, during the reign of Jupiter the key-bearer, the Sixth bearer of innocence, were utterly dried up;<sup>27</sup> and this was in the year of our Lord 1357, on the 12th day of April. The Sun was then with raging Taurus,  $0^{\circ} 46'$ ; the Moon was pouring Aquæ,  $5^{\circ} 29'$ ; Draco was covering his Head under the wave,  $3^{\circ} 38'$ ; Saturn was with Cancer,  $15^{\circ} 16'$ ; Jupiter was swimming in Aquæ,  $26^{\circ} 23'$ ; Mars was in Gemini,  $15^{\circ} 14'$ ; Venus was playing with Pisces,  $21^{\circ} 20'$ ; Mercury was with Taurus,  $11^{\circ} 32'$ . O shameless Taurus, this was the punishment for that old and rash divorce of thine from thy spouse, from her who, while the marriage with thee subsisted, increased thy dowry, raising thee on sharp horns for a space of more than four

<sup>24</sup> i. e., the lord Bernabo was driven out.

<sup>25</sup> i. e., the lord Giovanni del Olegio reassumed the sole dominion.

<sup>26</sup> i. e., while the lord Giovanni del Olegio was in power.

<sup>27</sup> i. e., an interdict on divine services and a suspension of studies in the city of Bologna were declared.



years, and setting thee on the broadest throne from the north towards the meridian. But thou in impatient rage didst divorce thy spouse and fall with broken horns. And because thou wast so lifted up, the Lord said unto thee, O Taurus, "because thine heart is lifted up, like the heart of a god, therefore I will bring strangers upon thee, the terrible of the nations: and they shall draw their swords against the beauty of thy wisdom, and they shall defile thy brightness, and they shall kill thee and drag thee down; and thou shalt die the deaths of them that are slain in the midst of the seas. Wilt thou yet say before them that slay thee, I am God, when thou art a man and not God? By the hand of them that slay thee, by the hand of strangers, thou shalt die, for I have spoken it, saith the Lord." This is written in Ezekiel, ch. xxviii. When Job shall be healed by the horns of Taurus, that which is in the centre shall be turned to the concave of the sphere.

To this case I append a treatise on Ecclesiastical Censure, explaining its several kinds in separate treatises.

#### *Fifth Case.*

After this, while Mercury<sup>28</sup> was again browsing within the pasture of Taurus, the second viper<sup>29</sup> adopted by Saturn as a son,<sup>30</sup> hastily urged Mars with swift motion to enter the pasture of Taurus,<sup>31</sup> . . . Finally, by Mercury's<sup>32</sup> contrivance, the most high brother<sup>33</sup> of Jupiter, receiving the papal insignia from him, the imperial from Saturn, the warlike from Mars, pre-eminent above all the other "hinges" of the Church, forestalling swift Mars,<sup>34</sup> was received within the pasture;<sup>35</sup> and so the circle of the first case completed its revolution. . . . [*Here follow twenty-three lines of which the text is practically unintelligible.*] I see two foremost counsellors of heaven about to come to a grand conference. The conference will be held in a damp and poisonous place. There they will treat of the shaking of the world below. There they will treat . . . There they will treat of change in the government of the world. There they will treat of danger to the Church. There they will treat of the raising up of pestilences and famines. There they will treat of the shaking of the region of the sea. There they will treat of the changing of the prince of the world in his seat, of the making of a mighty commotion. But three lower counsellors in another anterior corner of the same house will converse together at the same time, and many things they will dispute and determine concerning the disposition of the world, and these conferences shall be in the year of our Lord 1365, in the

<sup>28</sup> i. e., the lord Giovanni del Olegio.

<sup>29</sup> i. e., the lord Bernabo.

<sup>30</sup> i. e., appointed imperial vicar.

<sup>31</sup> i. e., sent a great army to seize the city.

<sup>32</sup> i. e., the lord Giovanni del Olegio.

<sup>33</sup> i. e., Egidio Albornoz, the papal legate.

<sup>34</sup> i. e., the army of the lord Bernabo.

<sup>35</sup> i. e., was chosen lord of Bologna.

month of October. O Taurus, it behoves thee to be ready and prepared with thy horns, for the brightness of the world will be overshadowed in thy stall, and do not thou disregard it. And this shall be in the year 1361, on the 5th day of May. Of these things the planets treated in grand and multiform conference, of which I have spoken in my treatise. These things the various aspects of their revolutions bring to pass, and there is to be noted another wedlock of Taurus. For with the revolution of the years, on the month and day on which he turned aside by expelling O.,<sup>36</sup> he has begun anew by receiving S.<sup>37</sup>

O Taurus, proceeding with multiform motion, though it has been ordained that motion should end in rest, it is in thy heart that motion should end in motion, and ordinarily in worse. For thee the end of motion is the beginning of motion. For thee to be at rest is to be moved, and now, imitating the gentile Cato, who took again her whom he had divorced, and returning whence thou didst turn aside, thou wast trusting to reach the end of unrest. But still thou shalt be moved, until it please the Most High to fashion for thee a stable habit. The brother of Jupiter fully entered in the year of our Lord 1360, on the 1st day of April. The Sun was then with Aries, 19° 24'; the Moon was in Libra, 11° 21'; the Head of Draco was in Sagittarius, 17° 36'; Saturn was . . . with Leo, 25° 8'; Jupiter was with Taurus, 21° 18'; Mars was in Pisces, 6° 23'; Venus was going before Mars in Pisces, 10° 52'; Mercury was in Aries, 16° 10'.

To this I shall append the deeds of peace, when they shall have come to pass. And I shall compose a separate treatise on Peace. . . .

## HERE BEGINS THE TREATISE ON WAR.

[Ch. i.]

In the treatise on War I shall proceed as follows :

First, I shall give a description of Human War, concerning which I shall principally treat, in genus.

Secondly, I shall divide War into heads.

Thirdly, I shall pursue the several heads.

### *What War is, and how it is to be described.*

War is described thus : It is a contention arising by reason of something discordant offered to human desire, tending to exclude the discordancy.

I said "contention." This I give as the genus, for it contains in itself both warlike contention and all other contentions; ff. De aqua plu. arcenda, l. *si usque*, last section. I said "by reason of something discordant," and this is the cause whence any contention arises. I said "to human desire," to

<sup>36</sup> i. e., the legate of Ostia.

<sup>37</sup> i. e., the legate of Sabina.



differentiate it from a contention of brutes. I said "to exclude the discordancy," &c., and this is the final cause of any war; for any war tends finally to destroy the displeasure which introduced it, and so wars are made for the sake of peace; xxiii, q. i, *noli*.

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*Of the Division of War, and how it is to be divided.*

[Ch. ii.]

Secondly, War is divided thus: It is either Spiritual or Corporeal.

Spiritual War is either Celestial or Human. Celestial Spiritual War is that referred to in Job, ch. xiv<sup>(3)</sup>. Human is that of which it is written in the Epistle to the Romans, ch. vii, "I see another law warring against the law of my mind"; xxxii, q. v, *si Paulus*.

Corporeal War is either Universal or Particular. Universal War is referred to in ff. De captivis, throughout; xxiii, q. i, and q. ii.

Of Particular War one form is waged for the protection of one's own body and property, and this is referred to in ff. De iustit. et iure, l. *ut vim*; ff. De vi et vi ar., l. i, § *vim vi*; and ff. Ad legem Aquiliam, l. *scientiam*, § *qui cum aliter*; and C. De vi, l. i; and De restit. spol., ch. *olim*; and Clem., De homicidio, *si furiosus*.

Another is waged for the protection of a mystical body, or a part of it, on account of a defect of jurisdiction; this is called "Reprisals," and is referred to in Authentics, *ut non fiant pignorationes*; and Sext, De iniuriis.

Another is waged on account of the contumacy of one who resists the jurisdiction of a judge; ff. De rei vindicatione, l. *qui restituere*.

Another is waged for "compurgation"; this is called "Duel"; C. De gladiatoribus, the single law; and De pugnantibus in duello, the whole title.

It is true that our first division might be into "lawful" and "unlawful" war; but on these little need be said, and the several heads must be explained severally in their order.

And first of Celestial Spiritual War, explaining it very briefly, and so of each in turn.

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*Order of the Treatises.*

I shall treat therefore of Celestial Spiritual War.

Secondly, of Human Spiritual War.

Thirdly, of Universal Corporeal War.

Fourthly, of Particular War for the protection of one's own body.

Fifthly, of Particular War for the defence of a mystical body, which is called "Reprisals."

Sixthly, of Particular War for "compurgation," which is called "Duel."

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*Of Celestial Spiritual War.*

[Ch. iii.]

Returning to these subjects severally, I say that Celestial War arose because of ingratitude arising from a defect in the impress of charity stamped by the Creator on an intelligence the most sublime of all created intelligences. And with this the description given above does not agree. Here we must know, that, as Gregory says in the *Moralia*, in the beginning of the creation of the angelic nature the Most High Creator of all created Lucifer to be more eminent than the other angelic intelligences. For his pre-eminence was not lower than the cedars in the garden of God, as is written in Ezekiel, ch. xxxi, "the fir trees, the plane trees did not equal his strength, nor his branches"; for he is described as "made fair in the multitude of his thick branches," . . . He was the seal of the similitude of God. He was therefore created more eminent than the rest, as he had also other openings prepared for the admission of charity. For from his first creation he was made capable of charity; and had he but consented to be filled therewith, . . . but he chose not charity because of pride. For had he shown himself penetrable to the gold of charity, he would have remained among the holy angels, a cut stone in a royal diadem. He had then the openings, but because of the vice of pride they were not filled with the gold of charity.

Inasmuch, therefore, as he was more eminent than the rest, as being created the seal of the similitude of God, and yet he would not be filled with charity because of the vice of pride, therefore he sinned and was condemned without pardon, because he was created great without comparison; therefore for this he was cast out from paradise, as may be seen at length and in most noble words in *De Pœnit.*, dist. ii, ch. *principium enim*. The passage is by Gregory, as I said above. This was the Celestial Spiritual War, upon which, as I said before, I shall say but little; yet as I said that Lucifer was more eminent than the rest, we must note that certain qualities were conferred on angels at their first creation, in common but in different degrees, and certain others in common but indifferently. Those which were conferred in common but in different degrees were subtlety of nature or substance, clearness of intelligence, ability of free will. Yet these qualities they have in different degrees; for some are more subtle than others in substance, some are clearer in intelligence, some are freer of will. The qualities conferred in common but indifferently were spirituality, indissolubility, indivisibility, immortality. In these all are made equal; and by this you will understand in what respects Lucifer was more eminent than the rest, because he was more eminent in the qualities that are conferred in common but in different degrees.

We must note, too, that the Devil was exalted by natural prerogative, of which it has been said that he was exalted also because of the victory which he sometimes has against man in the war which he wages against him, whence it is written in a Psalm, "Thou hast exalted the right hand of them that oppress



him." David feared this victory when he said, " Lighten my eyes lest I sleep the sleep of death, lest mine enemy say, I have prevailed against him." He was exalted, too, because of pride, whence it was said to him, " Thine heart was lifted up because of thy beauty"; for he himself said, " I will ascend into heaven, and will set my throne to the north ; and I will be like the Most High," Isaiah, ch. xiv.

*How Celestial Spiritual War is the mete and measure of Human Spiritual War.*

[Ch. iv.]

This, then, was the Spiritual War whereby Lucifer was cast out from the paradise of the Most High, and perhaps from it Human Spiritual War had its origin. For in every genus it is possible to arrive at one thing which is the first and the measure of all things within the common genus. So in the genus of the conflict of good against evil we may arrive at the first thing. The first thing is the beginnings ; but the beginning of virtue is the Most High, and the beginning and the prince of vices is the Devil. Their conflict, then, is the first thing and the measure of any lower human spiritual conflict.

*Of the natural influence of the Spiritual War of celestial bodies on terrestrial wars.*

[Ch. v.]

Now it may be, if I may speak in terms of natural philosophy, that terrestrial corporeal wars have celestial wars corresponding to them ; for, as the Philosopher says, this world is necessarily in contact with the higher motions, in order that all virtue may be directed thence ; Metaphysics, i, and De Cœlo et Mundo, ii. Every lower corporeal act, therefore, is directed by celestial ones above, and there is a conflict above, that is to say, virtual opposition, springing from the diversity of the celestial bodies, and especially of the planets, whose influence is more all-pervading than that of the fixed stars, and from the diversity of the aspects, positions, and motions of the same. Perhaps if we observe these we shall see that the world could not well be without war. And perhaps it would not be wrong, according to the teachings of natural philosophers and astrologers, to hold that the world could not continue without war and with peace alone, which might clearly be shown as follows.

*How, according to theologians and natural philosophers, it is necessary to assume the existence of war.*

[Ch. vi.]

If the sufficient and necessary productive causes of any effect are established, the effect itself must necessarily be established ; but the sufficient and necessarily productive causes of war are established, therefore war itself must

necessarily be established. The major premise is proved. For an effect follows its cause as regards being productive and destructive ; i, q. vii, *quod pro remedio* ; i, q. i, *quod pro necessitate* ; dist. lv, *priscis* ; dist. lxi, *neophitus* ; i, q. i, *detrahe* ; De baptis., *debitum*. The minor premise is proved. For according to the teaching of natural philosophers it is impossible for the heaven to stand still, Physics, vii and viii ; on the contrary its motion is perpetual, and the celestial bodies by their own nature work opposing effects upon these lower bodies, and this opposition of effects arises here below by reason of the variety of the aspects of the celestial bodies and their motions, as our sensations show us. For, to deduce the proposition strictly, by reason of the varied correspondence of the celestial bodies at the time of the construction of states, some states are found hating one another naturally, others are friendly or akin ; and so too there are men who hate one another naturally, not because of preceding deserts on one side or the other, and others who love one another naturally. Since, therefore, wars arise by reason of hatreds and discordances of desires, and these are necessarily produced by the motions of the celestial bodies, which are always and necessarily active, we infer that there will necessarily be wars, having regard to the necessity of material and corporeal nature. I admit, however, that natural power is not directly necessitated, and of itself might even resist. Hence the saying of Ptolemy in the Centiloquium, " the wise soul dominates the stars, . . . and we have praised him." I confess, however, that if the theologians think otherwise, I submit myself, in all that concerns them, to their correction.

Of this war, however, I do not intend to treat, because it would be to exceed the bounds of law too far.

Now six theological causes, which prevent there being universal peace on the earth, are usually given. The first is because offences are not punished, Ecclesiasticus, ch. iv. The second is the abundance of temporal things, Genesis, ch. xiii, " there was a strife between the herdmen of Abraham and the herdmen of Lot " ; James, ch. [v] iv, " whence wars and disputes," &c. The third is because we are not occupied in the fight against the Devil, so that we do not fight like men, Isaiah, ch. xxviii, " we have made a covenant with death and with hell " ; Ephesians, ch. vi, " we wrestle not against flesh." The fourth is because we do not consider the losses of war, in which we lose life and body and riches, Jeremiah, ch. lvi<sup>(3)</sup>. The fifth is because we do not weigh the issue of war, which is doubtful, 1 Samuel, ch. xii. The sixth is because we do not keep the precepts of God, Jeremiah, ch. iii<sup>(3)</sup>, " would that thou hadst hearkened to my commands," &c.

We see, then, from what I have said, that celestial spiritual war is twofold. The first is the war of the Creator against Lucifer himself, springing from defect of charity turned into pride, drawing him down from his celestial throne to the centre of the earth. And this war lasted but a moment ; see Job, ch. xiv, above. The second is the virtual opposition of the motions and aspects of celestial bodies, which introduces formal opposition in these lower bodies, whereby the lower wars are introduced, and this is continuous and successive.



On the first, in terms of theology, depends Human Spiritual War, which proceeds from the opposition of intellect to sense. For the Prince of Evil persuades and induces to sin, that he may draw us down, Ephesians, ch. vi; but the Prince of Good, on the contrary, strives to raise us upwards. On the second depends Human Corporeal War, and even Human Spiritual War, to speak in the terms of natural philosophy, as will be discussed in the treatise next following.

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*Of Human Spiritual War, according to Theology.*

[Ch. vii.]

Human spiritual war may be explained theologically and morally. Theologically it is a contention arising by reason of the envious opposition of the Devil against a reasonable creature, having its impetus in the sin of our first parent. And of this spiritual war the Apostle speaks in Ephesians, ch. vi, saying, "Take unto you the armour of God, that ye may be able to withstand the deceits of the Devil." And this armour is the virtues and good works wherewith men are armed against the vices; xi, q. iii, *qui resistit*. Now the deceits of the Devil are innumerable, for, as Pope John says, "he has a thousand ways of injuring, and we know his cunning. For from his first fall he tries to break the unity of the Church, to wound charity, to poison the sweetness of holy works with the gall of envy, and in all manner of ways to pervert and perturb the human race. For he is sorely troubled and shamed that men formed of clay should keep charity on earth, which he could not have in heaven. Hence ought we, so far as our frailty will allow, to fortify all approaches of injury against his cunning, lest death enter by our doors." These words are in xvi, q. ii, ch. *visis*. So in another place Jerome writes most beautifully to Jovinian in these words, "Thus in evils and sins are the inciting seeds and the working of the Devil. When he sees that we have built on the foundation of Christ hay, wood, and stubble, then he applies fire. Let us build therefore gold, silver, and precious stones, and he will not dare to attack; although even in this is no sure possession, for the lion lurks in ambush, that he may kill the innocent in the secret places, and the furnace proves the potter's vessels, but just men are proved by the temptation of tribulation." These words are taken from De Pœnit., dist. ii, ch. *si enim*, about the middle. In another place, too, Pope Alexander writes in these words: "For the Devil does not cease to go about seeking whom he may devour, and seeking whom of the faithful he may destroy, and especially those whom he finds more ardent in the service of the Saviour and devoted to Him." These words are taken from iii, q. i, *nulli*, and ch. *verum*, originally from 1 Peter, ch. v. And this war had its impetus in the sin of our first parent, not as a positive cause, but as a necessary one. For if our first parent had not sinned, this conflict would have come to naught.

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*Of Human Spiritual War, according to Moral Philosophy.*

[Ch. viii.]

Now Human Spiritual War, if we understand it in a moral sense, and speak after the manner of philosophers, is a contention arising by reason of the opposition of reason to sensitive appetite. Here we must note that, according to the Philosopher, in *De Anima*, ii, the soul has five potentialities, vegetative, sensitive, appetitive, intellectual, and, according to place, motive. The appetitive is divided into sensitive and rational. The same Philosopher, in *Politics*, i, shows that the soul dominates the body with a rule disposed or ordered like that of a master over a slave. But the intellect dominates the sense with a royal rule, that is, a rule ordered over free persons ; that is to say, the soul dominates the body as a master his slave, but the intellect dominates the sense as a superior dominates one who is subject to him, though free. Further, we must observe that the intellect is called rational because it formally contains reason in itself ; but the sensitive appetite is called rational, not because it contains reason in itself, for they are formally distinct potentialities, but it is called rational because in man it is created ready to obey reason, and irrational because it is capable of not obeying reason, or formally admits of the exclusion of reason. From these premises it clearly appears that sensitive human appetite sometimes resists reason, and sometimes obeys it. When it resists, there is war and opposition ; when it obeys, there is peace and concord. The example in the great universe is clear, where all lower things are created apt to obey the higher things. Hence the saying of the same Philosopher in *Metaphysics*, i, and in *De Coelo*, ii, that this world is necessarily in contact with the higher motions in order that all virtue may be thence directed, and yet sometimes it does not obey because of the disarrangement of matter, and thence come things contrary to the intention of the superior agents, such as monsters ; so the sensitive appetite, being lower, is apt to obey. Hence what the same Philosopher says in *De Anima*, ii, about that which is moved and that which moves, that if the intellect moves the sensitive appetite, and is obeyed by it, the motion is natural, as it is when a higher sphere moves a lower. But if the contrary, then the motion is not natural, as if a lower sphere were to move a higher. The example in a civil monarchy is clear, for some subjects oppose their princes. Consider the examples of this opposition in the continent and the incontinent man. For even in the continent man the sensitive appetite inclines to excess ; for example, to inordinate food, drink, or the like. Reason teaches that excess is to be avoided as injurious, and in the continent man intellect and reason prevail ; so that, properly speaking, continence is not an established moral virtue, for, as the same Philosopher says, in the virtuous man all things are harmonious. Hence, when, after many and frequent acts, a kind of readiness has been established in the sensitive appetite, inclining the sensitive appetite itself to the good, and to conformity with reason, then virtue really exists. But in the



incontinent man this opposition is obvious, but in him the sensitive appetite prevails ; yet his incontinence is not called an established vice until, after frequent acts, it has become so accustomed to incline to evil that it now always inclines that way without any opposition. This opposition is what we mean by Human Spiritual War in the strict sense, speaking in the terms of moral philosophy. Of this opposition, too, the Apostle speaks to the Romans, ch. vii, " I see another law warring against the law of my mind " ; quoted in xxxii, q. v, *si Paulus*. This opposition is also referred to in dist. vi, *sed pensandum* ; De constitutionibus, *nam concupiscentiam*. And Gregory speaks of this spiritual war in xxiii, q. i, *nisi bella*. Now in this opposition there is regularly, from youth upwards, an inclination to evil ; for every age, from youth upwards, is prone to evil ; Genesis, ch. viii ; xii, q. i, *omnis ætas*. And many reasons have been assigned for this. The first is because one can do evil of oneself, but good only by grace. Another is on account of the impetus of original sin which impels us to evil. Another is because evil is easier than good. For good consists essentially in a mean, but vices in extremes ; and there is only one straight way to the mean, but many ways to the extreme. Another is because there are more obstacles to good than to evil. Another is because good can only be done with the judgement of reason, in which young men are deficient, because of the darkening of their bodily organs. And this I believe to be the true reason. So much of Spiritual War, as to which more might well be written ; but I pass it by, because it would overstep the bounds of law, to which, as far as possible, I intend to confine myself.

### *Of Universal Corporeal War.*

[Ch. ix.]

In the third place, as I am to treat of Universal Corporeal War, I shall set forth my treatment of the subject in the form of questions :

Firstly, by what law war had its origin and introduction.

Secondly, who may declare universal war, and against whom it may be declared.

Thirdly, what are the means of making war, briefly explaining what acts are lawful and what unlawful in persons making war, and formulating certain questions on those subjects.

Fourthly, what persons may be compelled to fight, and of those who participate in a war without compulsion.

Fifthly, of the spoils of war, and of certain other incidents of war.

Sixthly, by means of a table for the instruction of the canonist, of questions touching the matter of war. Whenever a subject has been treated in the Corpus Iuris Canonici by the glossators and doctors, I shall omit it.

*By what law Universal Corporeal War had its origin.*

[Ch. x.]

I return to my first question, and I ask by what law Universal Corporeal War had its origin. Solution. By the divine law and the law of nations. By the divine law ; this is proved by Joshua, ch. viii ; 1 Samuel, ch. xvi. By the law of nations ; ff. De iustit. et iure, l. *ex hoc iure*.

*How Universal Corporeal War had its origin in Divine Law.*

I said that wars arose by divine law ; here we must note that wars were introduced not only with the permission, but by the positive allowance, of the Lord. And this may be proved ; for every power tending to good is so derived positively, and not merely permissively. But the power of declaring lawful war tends to good ; therefore it proceeds positively from God. The major is proved ; for " every good gift and every perfect gift is from above and cometh down from the Father of lights," James, ch. i ; i, q. ii, *quem pio*. The minor is proved ; for a declaration of a lawful war and a lawful war itself tend to the good, for they tend to the peace and quiet of the world. This is proved by the authority of Augustine to Boniface, who says, " war is not sought that war may be practised, but war is waged that peace may be sought." He adds, " be therefore peaceful in war, and by your victory lead those whom you overthrow to the blessings of peace." These words are in xxiii, q. i, *noli*. The end of war, then, is the peace and tranquillity of the world. Therefore we conclude that it proceeded originally and positively from God. This is confirmed : For every act punishing evil persons proceeds from God, but the declaration of a lawful war is an act punishing evil and rebellious persons. Therefore it proceeds positively from God. The major is proved thus : For it is written, " To me belongeth vengeance, and I will repay " ; [Proverbs, ch. xxii] ; [xxiii, q. i, ch. *item cum in Proverbiis*] ; and in another place, " vengeance is mine, and I will repay," Deuteronomy, ch. xxxii ; Hebrews, ch. x ; Romans, ch. [xiii] xii. The minor is proved by the authority of Augustine in the Sermon on the Centurion's Son, xxiii, q. i, *paratus*, at the words *nam corripiendo*. We might even infer from this reasoning that it is theologically necessary that there should be evil and rebellious persons in the world ; for in the divine majesty are acts rewarding the good and punishing the evil, as it is written, " nullum bonum," &c. Further, on that assumption it might be argued thus, that, assuming an activity, there must necessarily be assumed an object of that activity. This is proved by the words of the Philosopher in De Anima, book ii ; for, assuming an act of vision, a visible object must be assumed. So too, assuming an act of hearing, an audible object must be assumed. Assuming, therefore, from the first creation of the world, an act of punishment in God,



it is necessary to assume an object of punishment, and that is Evil, as I showed above. The first principal proposition is confirmed : For every act whereby the power of injuring is taken away proceeds positively from God. But a declaration of lawful war is such an act. This is proved by the authority of Augustine, who says, " Wars are waged in order to bring the vanquished to the fellowship of piety and justice." He adds, " For defeat is beneficial to one from whom it wrests the power to do iniquity, since nothing is more unhappy than the happiness of sinners, which nourishes penal impunity, and strengthens the evil will, like an enemy within." These words are in xxiii, q. i, *paratus*, at the words *ac per hoc*. This is confirmed : All power is from God, by His command or permission ; therefore warlike power proceeds from Him, but it so proceeds not only by His permission, but also by His command. Therefore He commands. The principal proposition is proved ; Romans, ch. xifi ; quoted in xxiii, q. i, *quid culpatur*. In short, is not this clear if we regard the generations of the world ? for from the first creation of the world down to the times of Noah, God by His own act and without assistant was destroying the evil, as appears from the story of Cain and Abel, and certain other princes, in Genesis, chs. iv and v. Of Himself, therefore, He introduced wars to punish and destroy the bad. We conclude therefore, from the premises, that wars were originally introduced by divine law. Metaphorically, or rather perhaps naturally, it might be demonstrated thus : For as the natural philosophers say, man is a small world, and as government goes on in the small world, so it does in the universal whole, if the analogy be traced, as the Philosopher says in Physics, book viii ; and in the natural ordering of the body it is clear that, when there is no excess of humours, there is no rebellion opposed to natural conservation and duration. But when there is excess of humours arising from disordered control, then there is a struggle of nature tending to conservation against excess tending to destruction ; and in the struggle the natural power is sometimes strong enough to correct the opposition, sometimes it is powerless because of the excess of the disease, and then there is need of an extrinsic remedy, of a medicament partaking of the nature of poison, but of one which is opposed to the disease. So exactly in the great world. For sometimes, in a territory and region of the world, there is no excess of rebellious persons, and then there is no conflict, or rather the guiding hand of Nature tends uniformly to its conservation. Sometimes there is excess of rebellious persons, tending to the destruction of government and of conservation, and then sometimes Nature corrects it of itself, by monitions, exhortations, and other soothing processes, and then there is no need of war, or poisonous medicament. Sometimes the disease has advanced so far that a poisonous medicament is needed, extirpating the matter of the disease entirely, and such a medicament is a war to eradicate and exterminate the bad. So, then, in the small world, when the inner virtue fails we turn to a doctor, who operates by a remedy which is extrinsic and poisonous, just as in the great world the general governor, who is the Most High Creator, and the doctor of the universe, tending to its conservation

and government, when the humours which tend to its destruction or the destruction of a part of it have grown so great . . . uses the remedy of war to exterminate vices and excesses, and to reduce . . . to the proper temperature. And as in the human body these excesses of humours attack the several members of the human body, and even dissolution begins, sometimes because of excess of one humour, sometimes of another, so in the universe the several territories and regions of the world, which are the members of the great world, are attacked by these excesses of vices, which oppose its government, sometimes in one place, sometimes in another, according to the varieties of vices. And so it happens that the regions of the world are sometimes weakened by excess of vices, which sometimes grow so great that there is need of a medicament which will eradicate the good with the bad, just as medicine, too, drives out good and bad together. Nay, sometimes this excess leads to utter extinction, like death in individuals, as we may see for ourselves ; for innumerable regions have been utterly extinguished and rendered uninhabitable for these reasons. Innumerable examples might be cited ; and this same thing happens in families and governments, which also are reduced and utterly extinguished. And though what I have said has been metaphorical, yet it is most clearly proved by texts of the divine law ; for we read in Genesis, ch. xix, that on account of the excessive disease of Sodom, God used the eradictory medicament of war against Sodom, Gomorrah, Zeboim, Zoar, and Admah, though two of these perished because of their neighbourhood ; De Poenit., dist. i, ch. *sed continuo* ; De excessibus praelat., ch. *clerici* ; and Authentics, coll. vi, ut non luxu. contra naturam, near the end. Innumerable examples might be cited. This medicament of war, too, is referred to in Joshua, ch. viii, for there our Lord orders Joshua to lay himself an ambush behind, that is, to set warriors in ambush to lie in wait for the enemy. And Augustine, in the Liber Quæstionum, says of the words of Joshua, " Wars are called lawful which avenge injuries," that is, excesses of offences. And he adds, " So a people or a city must be made to suffer which has neglected to punish the wrong-doing of its own men." He adds, " but this kind of war is undoubtedly lawful, because God, Who knows what is every man's due, ordains it." He does not say " permits," but " ordains." He adds, " in such a war, the general of the army or the people itself should be regarded not so much as the author of the war as the minister of God." And thus it is clearly proved that God, as the most high doctor and preserver of the universe, ordains wars in order that offences may be rooted out. These passages are quoted in xxiii, q. ii, *Dominus Noster*. Of this war and eradictory medicament it is also written in I Maccabees, ch. v, and Deuteronomy, ch. ii, where, by the command of God, the sons of Israel wage wars against the Amorites ; and Augustine also treats of it in the book of Numbers, quoted in xxiii, q. ii, ch. *notandum sane*. Of it also it is written in Judges, ch. v, " the Lord appointed new wars," referring to wars which eradicate excesses of vices. Isaiah, too, writes in ch. xxx, " and in battles of shaking will he fight," like a warrior. Of those who



eradicate, it is written also in 1 Maccabees, ch. iv, "take heart and fight." And in Jeremiah, ch. xx, also it is written, "The Lord is with me as a warrior." Jerome, on Zephaniah, describes it most beautifully in the words, "if a man enfeebles the strength of a robber or a pirate and renders them weak, their weakness advantages them; for the weakened members, which formerly they used ill, will cease from evil works." Jerome's conclusion is that the vicious are made healthy by the expulsion of the disease which disposed their infected members to evil, and this is done by an eradictory war. This passage is xxiii, q. iii, ch. *si quis fortitudinem*. This is clearly proved by what is written in Luke, ch. xii, and in Hebrews, ch. xii, where the Lord says, "That servant which knows not his lord's will and commits things worthy of stripes, shall be beaten with few stripes; but that servant which knows his lord's will and commits things worthy of stripes, shall be beaten with many stripes." So he who exceeds received stripes from the Lord. This passage is cited in xxiii, q. iv, ch. *ea vindicta*. Hence we read that Elijah put many to death by his own hand and with fire obtained from heaven; 2 Kings, ch. i.; and ch. *ea vindicta*. Further, in xxiii, q. iv, it is so written of others in the time of the old dispensation; 1 Kings, chs. xvii and xviii; and so it is written that Ananias and his wife fell dead at the words of Peter, the chief of the Apostles; Acts, ch. iv. This is quoted in xvii, q. i, *Ananias*; and xxiii, q. iv, *ea vindicta*, at the end. And Gregory has a beautiful passage about this eradicating war, written to Brunhilda, queen of the Franks, in which he says, "lest, if, because of our unbelief, the anger of the divine vengeance should be stirred by the acts of the wicked, the plague of war should destroy sinners whom the precepts of God do not recall to the path of rectitude"; xxiii, q. iv, *si quos*. Does not the Lord say to Moses, "thou shalt not suffer malefactors to live"? Exodus, ch. xxii. Moses, too, who had received the law from the Lord, punished the worshippers of the idol with death; Exodus, ch. xxxii; and Samuel, by the Lord's command, hewed in pieces Agag, the richest of kings; 1 Samuel, ch. xv. These passages are quoted in xxiii, q. v, ch. *hinc apparet*. The Lord also drowned the Egyptians in the waves; Exodus, ch. xiv; and he scattered the corpses of the Israelites in the desert; Numbers, ch. xiv. These passages are cited in xxiii, q. v, *quid ergo*. Innumerable examples might be cited to prove this from the old and the new divine dispensations; but these are sufficient to establish the conclusion that wars originally had their origin in divine law, and not merely by God's permission, but rather positively from God Himself, as the governor of the world, and the doctor who eradicates its vices, for the sake of the salvation and conservation of the world, and because these remedies of war tend to this end, as I clearly showed above: and we can see for ourselves that, because of this . . . and excess of manifold vices in the advancing destruction of the universe, the Most High Creator in times past used this eradictory remedy; for how many kingdoms and governments of the world have been utterly destroyed, how many brought low? What of the empire of the Trojans? or that of the Greeks? or the universal dominion of the

Romans ? Parts of Italy in our own times are in fever and are being subjected to trial. The medicine is being prepared ; . . . according to the doctrine of the most learned Hippocrates, in the first book of the Aphorisms. . . . But this conclusion, that wars proceed positively and originally from God, might be proved by observing the uniform and perpetual instrument of the divine majesty. For the Most High Creator of all works through the mediation of the celestial frame on this terrestrial frame naturally, howbeit supernaturally. When He wills, He inspires and influences it immediately ; but I speak in terms of natural philosophy, following the saying of the most learned Philosopher, in *De Meteoris*, i, and *De Cœlo*, ii, that it is necessary that this world should be in contact with the higher motions, in order that all virtue may be directed thence. Therefore the Most High influences naturally these lower regions by the mediation of a celestial and spherical body, while that whole body works by the mediation of motion and light, as the same Philosopher says. And because in the whole celestial frame itself there are parts which have virtues of diverse influence, as the variety of spheres, the diversity of wandering and fixed stars, on which, by reason of the variety of their natures and motions, every created and corruptible thing effectively depends, therefore a certain contrariety and diversity of natures, an opposition arising here below, is dependent on that above. Whence it may be at once inferred that, as opposition and difformity are the causes introducing wars, wars arise thence ; and more, experience teaches that uniformity and difformity of aspects at the time of birth give rise to natural affections and natural enmities between men. This any one may experience ; for one will love another at sight, with no antecedent merits, and one will hate another in the same way, with no antecedent demerits. So affections and hatreds arise naturally between cities and towns and camps, on account of the uniformity and difformity of aspects at the time of their construction ; and so from celestial influence arise hatreds, and wars, and friendship, and peace, and it is the same between provinces. But this celestial nature, by the mediation of motion, is productive of generation and corruption, of growth and diminution in these lower things ; and its influence is felt not only on single things below, but on whole regions of the world, for by this higher nature habitable regions have been made uninhabitable, and uninhabitable habitable. For, according to the teaching of the Philosopher, when the sea shall become dry, . . . from this opposition of natures and dispositions from which arise quarrels, contentions, wars particular and universal. This opposition, on account of the variety of motions and aspects, exalts some, extinguishes others, depresses others, and changes the governments of the world, universal and particular. And this may be proved ; for if the sufficient productive cause of any effect is established, the effect must needs be produced, unless something extrinsic is present to hinder its production ; but the celestial nature is continually changing in motion and aspect, and its parts differ by their own nature in influence. Therefore these opposed and different effects must needs be produced, since there is nothing to hinder them,



and from this we might infer that wars must needs be in the course of nature and that otherwise the government of the world would not proceed naturally. Yet I protest that although the celestial nature has this effect on these lower things, yet it does not work of itself and directly upon the human intellect, but the freedom of the will endures ; xxiii, q. iv, ch. *Nabuchodonosor*, and ch. *de Tiriis* ; De Pœnit., dist. ii, ch. *sicut enim* ; and the Philosopher, Ethics, iii. But it works on the organ of the sensitive virtues, which receive the influence and direct the intellect, and thus its influence is indirect. Hence what is written in the Centiloquium, “ the wise soul dominates the stars.” But inasmuch as to treat of this subject would take me too far from the bounds of law, I say no more about this conclusion ; but let it suffice that we have inferred and proved, by what has been said, that wars have proceeded from God positively and effectively, although the last discussion shows us that they came not immediately, but by the mediation of the celestial frame, by the operation of natural causes.

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*How Universal Corporeal War had its origin in the Law of Nations.*

[Ch. xi.]

I said, secondly, that wars were recognized by the law of nations. Now here, although the laws say that wars were introduced by the law of nations—as, for instance, Isidore, dist. i, *ius gen.* ; and the jurist Hermogenianus in ff. De iustit. et iure, l. *ex hoc iure*—yet I think that wars had their origin not only in the equity of natural human created intelligence, but primordially in the disposition of creative Nature, which influences not only human actions, but all other things animate and inanimate also ; so that it is true to say that wars have their origin in natural law, even as distinguished from the law of nations. As to how these differ, I may refer to ff. De iustit. et iure, l. i, § *ius gen.*, and § *ius naturale*, and l. *ex hoc iure* ; and dist. i, *ius naturale*, with the gloss thereto, and ch. *ius naturale*. That this is true may be shown thus : Natural first principles have implanted in every created natural entity a natural inclination to exclude everything opposed to its natural disposition. This is clear if we look at particular natural entities, simple and mixed ; for resistance to fire is implanted in water, and resistance to water in fire, because of the opposition of their qualities. This which is true of single elements might be shown to be true of things mixed ; but it is especially clear in the brutes, where, from a natural opposition of complexions, one is inclined naturally to kill another, and the other to kill it. Thus, in a rational creature Nature has implanted an inclination, even circumscribing the dictates of the intellect, to hunt whatever is repugnant to itself. That this is true, reason shows ; for Nature, the producer of all created things, must be not less solicitous in the conservation of a rational creature than of its other products, since the former is itself nobler ; De pœn. et remiss., ch. *cum infirmitas* ; and De sac. sanc. eccles., l. *sancimus* ; and xxxiii, q. v, ch. *hæc imago* ; and for its sake, as the

end, all things below the lunar globe were produced ; ff. De usuris, l. *in pecudum*. If, therefore, Nature has implanted a natural inclination in all other created things to hunt whatever is opposed to themselves, how much stronger must this inclination be in a rational creature ? The same thing is clear to our senses if we examine particular instances, for any one experiences this in himself, if this instinct is implanted in men by natural first principles ; and therefore war had its origin primordially in this natural inclination, since war, as above described, is a contention arising for the sake of destroying opposition. We may infer, therefore, that this contention which arises for the sake of destroying what is discordant and opposed to one's own conservation has its origin fundamentally in natural first principles, and so in the law of nature, as distinguished from the law of nations. But you will say at once that this conflicts with the texts which say that it arises from the law of nations ; but as to that, we must observe that, although this natural inclination is introduced by natural law, our natural intelligence being limited, yet the inclination is regulated by the dictates of reason and natural intelligence ; just as we say of particular acts which are proper to men by nature, their intellect being limited, such as the inclination to food and drink and sexual intercourse, that these acts are natural to men, and yet in a man they are regulated by the dictates of reason, which is not the case with the brutes, for they lack that dictation. So, then, I believe that the meaning of those texts was that the regulation of that inclination, introduced by natural first principles, arises from the law of nations, that is, from the general equity of natural intelligence, but the inclination itself is from natural law. This is proved by the gloss on ff. De iustit. et iure, l. *ex hoc iure* ; and dist. i, *ius gent.* For the gloss in both passages to the word " wars " adds, by way of explanation, " lawful," and so understands the text to refer to an inclination regulated by the dictates of reason. And although the texts say that wars arise from the law of nations, yet I do not think it false to say that wars, that is, these regulated inclinations, have their origin in the civil law and in the canon law. For the civil and the canon laws do not speak of an equity different from the equity of the law of nations ; rather they are that equity itself, for all law consists in a kind of rectitude, and that is why it is called " ius " ; dist. i, *ius generale*. But the civil and the canon laws are the rectitude of life and the equity of the law of nations. But they add to that rectitude a kind of explanation, for they have to specify and explain the rectitude and equity of the law of nations, sometimes by limiting it in suitable modes, sometimes by applying it to various acts, sometimes by determining it by various events. All these points are proved by the text in ff. De iustit. et iure, l. *ius civile*. For the text there says " the civil law is a law which is neither wholly distinct from natural law or the law of nations, nor wholly subordinate to them ; and so when we add anything to or take anything from the common law, we make it special, that is, civil, law." It is therefore true to say that wars come from the civil and the canon laws, that is, from rectitude itself, which is the civil and the canon laws. Nor are the texts just



cited opposed to this, because that rectitude, with nothing added or taken away, is called the law of nations. And so the laws just cited say ; but when something has been added or taken away, then it is called civil or canon law ; no one, however, doubts that the civil and canon laws do add something on the subject of wars to the dictates of general reason. The foregoing discussion shows us in what law wars had their origin.

*Who, first and chiefly, may declare Universal War, and by what Law, and against whom ?*

[Ch. xii.]

I ask, secondly, what law allows the Church to declare war against infidels, and to invade their territories, and to grant indulgence on this account, since the laws seem to ordain the contrary ; for those who are outside the Church are nothing to us ; ii, q. i, *multū*. Also by origin their possessions and jurisdictions belong to them. For God so arranged throughout the whole rational creation, for he makes the sun to rise on the just and on the unjust ; Matthew, chs. v and vi, at the end. Also men are not to be compelled to the faith, for all others who have not been incorporated are to be left to their own will ; dist. xlv, *De Iudæis*. And what is more, jurisdiction may be delegated to the infidel over those who are converted to the faith, provided it do not burden them too heavily ; 1 Timothy, ch. vi. In the second place, to make the matter clear, we must observe that I ought here, in the first place, to set out the matters which I have treated on the subject of reprisals at the beginning, namely, whence the Church had its jurisdiction, and also whence the Emperor had his ; but I do not set out these matters here, because they have been fully treated there. On this understanding, then, we ought also to observe that in the same community and under the same king there are two peoples, and for the two peoples two lives, and for the two lives two governments, and for the two governments a twofold order of jurisdiction. The community is the Church, the one King is Christ, the two peoples are the clergy and the laity, the two lives are the spiritual and the carnal, and the two governments are the priesthood and the Empire ; but of these one is supreme, namely, the Papacy, to which the other is subordinated. Otherwise the argument of the Philosopher in Metaphysics, book xii, showing the unity of the Creator, would be absurd. He says that a multitude of governments, evil entities, tend to be ill-disposed, therefore there is one head ; and so precisely in the question before us ; also because, in any class of entities, it is possible to postulate one that is first, which is the mete and measure of all the others, as the same Philosopher shows. So in a whole monarchy it is possible to arrive at the head ; and so, too, in natural objects it is possible to arrive at the primary motionless motive power, as the same Philosopher shows in Physics, books vii and viii. The Empire cannot

stand in such a relation to the Papacy. I pass over innumerable arguments, and merely cite the following, which will suffice to show that there is one Lord of the earth : vii, q. i, *in apibus* ; ix, q. iii, *cuncta per mundum*, and ch. *per principalem* ; ff. Ad leg. Rhod. de iact., l. *deprecatio*. And he is the Pope. He has jurisdiction not only over the faithful, but also over infidels, as is shown more clearly than day ; for Christ had power over all, whence the passage in the Psalm : "O God, give thy judgement to the king." If Christ had it, He would not have been a loving father, if, when He constituted Peter His vicar, He had not entrusted the charge to him, which it is sinful to suppose. Also He handed to Peter the keys of the kingdom of heaven, saying, " whatsoever thou shalt bind," &c. ; Matthew, ch. xvi. And in another passage, " Feed my sheep," in the last chapter of John. So, therefore, the Pope, as a matter of law, has jurisdiction over infidels, though not as a matter of fact. Hence it is that if a barbarian, who has only the law of nature, sins against the law of nature, he may be punished by the Pope. For it is written in Genesis, ch. xix, that the Sodomites were punished by God ; therefore the Vicar of God also has this power. The same, too, if they worship idols ; for it is natural to worship the Creator and not His creatures. So, too, he may punish Jews, if they act contrary to their own law in matters of morality, and are not punished by their governors. There is no doubt that he may punish Christians, if they act contrary to the law of the Gospel. From all this we infer that the Pope, like a true prince, may declare war against infidels, and grant indulgences for the recovery of the Holy Land, and especially of the land consecrated by the birth of Christ, by His habitation, and death, where Christ is not worshipped, but Mahomet. Also, the Holy Land was conquered, after the death of Christ, in a lawful war by the Roman Emperor, who was afterwards robbed of it by the infidels. Therefore the Pope may recover it by reason of the principality which he holds. But in other lands which are not consecrated, and where neither the Empire nor the Church had jurisdiction, the Pope may in fact command that they do not molest their Christian subjects. Otherwise he may by a judgement deprive them of their jurisdiction, and thereby . . . which Innocent noted, *De voto, quod super his*. The solution of the first question is clear, namely, of the justice of a war declared by the Church against infidels ; and from this may be inferred the justification of a war declared by the Emperor against enemies.

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*Evidential. And a discussion as to who are the emperors against whom war may be declared.*

[Ch. xiii.]

Here we must note that there are two peoples, the Roman people, and strangers. To the Roman people belong, first, all who are in complete obedience to the Roman Empire, for the people means the whole Empire ; Ad munici-



palem, *l. Roma*. Some are not in complete, but only in partial obedience to it, as when they live according to the laws of the Empire and admit the Emperor to be lord of the earth, like the cities of Lombardy and the like ; and these, too, belong to the Roman people, since it exercises jurisdiction in some matters ; *De aqua pluv. arc.*, *l. si prius* ; and this passage should be noted. There are some peoples who neither obey the Emperor nor live according to the laws of the Empire at all, but say that they have this position by privilege, like the Venetians, who assert that they have it by privilege. These, too, belong to the Roman people, because they hold their privilege at the will of the Emperor, and he can revoke it whenever he will ; *ff. De legat.*, *iii. l. si quis in principio*. Moreover this privilege, when granted to them, ought to be so ordered as not to deprive them of Roman citizenship ; *ff. De captivis*, *l. in bello*, § *si quis servum*. There are other peoples who do not obey the Emperor and assert that they have this immunity by contract, like the provinces subject to the Roman Church, which assert that it belongs to them by the gift of Constantine and other Emperors ; and these, too, belong to the Roman people, for the Church exercises there the jurisdiction which the Empire had, and hence they do not on that account cease to be Roman citizens. I say the same of the kings who do not admit that they are subjects of the Emperor, as the King of France, of England, of Spain, and the like, who assert that they are independent by privilege or prescription. And by this I conclude that almost all nations which obey the Holy Mother Church belong to the Roman people ; and any who should say that the Emperor is not lord would be contradicting the text of the Gospel, when it says, " there went out an edict from Cæsar Augustus," &c. But there are foreign peoples who do not admit that the Emperor is lord, like the Greeks, who say that their emperor is lord. So, too, the Tartars say that Grancanes is lord, and the Saracens say that their emperor is lord. Among those peoples, however, there is a distinction, for some of them are allied to us, as the Greeks against the Turks ; there are others with whom we are at peace, like the Tartars, for our merchants go to them and theirs come to us ; there are others with whom we have no dealings, like the Jews ; and others with whom we are at actual war, like the Saracens, and to-day, the Turks. We infer, then, that, since the Emperor is the secular head, having no superior in secular matters, except perhaps in the instances I have mentioned he may declare war against his enemies ; and who these are was clear from the passage immediately following. And this is the war which is spoken of in *ff. De captivis*, *l. hostes* ; and *De verbor. significatione*. And herein war claims its place, and therefore it is declared by the Roman people or Emperor, so that, if the Emperor declares war on any rebellious cities of Italy, that war ranks as a public war, because to resist an official of the Emperor or of the Pope, if the resistance is not in the name of the Emperor or the Pope, is one and the same thing.

*Whether universal war may be declared by others than a prince ?*

[Ch. xiv.]

I ask whether universal war may be declared by others than a prince. Solution : It may not be declared without the authority of a prince, for no one may bear arms without a prince's licence ; C. Vt usus armorum, in red ; and the gloss on Authent., De mand. princ., coll. iii ; and on Authent., De armis, coll. vi. And the reason is that no one may violate the laws of princes without the prince's licence. But one who, without the solemnity of law, with kingly authority, makes law for himself, when he might resort to a lawgiver, does violate the law ; therefore it is not lawful without the prince's authority. The prince, then, alone may declare war by his own authority, since he has no superior to whom he may resort to obtain justice. To-day, however, because there are peoples who do not recognize a superior in fact, the authority of a superior is not required, since they do not recognize one. Nay, every day wars are declared by one people against another, without asking the leave of any one.

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*Whether war made by the Emperor against the Church is lawful, and whether subjects are bound to obey him therein ?*

[Ch. xv.]

The second question is whether a war which the Emperor makes against the Church is lawful, and whether subjects are bound to obey him therein. It appears so, because it is by the authority or command of the prince ; therefore, &c. Also because there are two jurisdictions ; De iudiciis, *novit* ; Qui filii sunt legitimi, *causam*, and ch. *per venerabilem* ; De appell., *si duobus*. Also because subjects are bound to obey the Emperor in matters concerning the use of arms, even if he be schismatic ; xi, q. iii, *Iulianus*. Solution : The contrary is true, for the Emperor is the Church's advocate and is bound to defend it ; therefore he may not attack it ; De natis ex libero ventre, the single chapter ; De restit. spol., *conquerente*. Moreover, by declaring war against the Church he deserves to lose the privilege of declaring war, since he abuses it ; xi, q. iii, *privilegium* ; De decimis, *suggestum* ; so that he may be punished for his offence ; De translatione, *quanto*, § *ne autem*. Nay, such obstinacy in the prince does not differ from heresy ; De hæreticis, *excommunicamus*, i, § i ; and this passage should be noted. Also because the Pope is his superior ; for he examines, reprovcs, and deposes the Emperor himself ; De elect., *venerabilem* ; Sext., De re iudic., *ad apostolicæ*. In this case, therefore, subjects are not bound to help the Emperor against the Church, but rather the contrary. And the Pope may absolve them from the bond of fealty ; xv, q. vi, *nos sanctorum*, and ch. *iuratos* ; and note De hæreticis, *excommunicamus* ; De pœnis, last chapter ; and in this matter, Hostiensis, De resti. spoliatorum, *olim*.

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*What is the law when the Pope makes war against the Emperor?*

[Ch. xvi.]

The fourth question is what, on the other hand, if the Pope declares war against the Emperor? The solution appears from what precedes; for if the Pope declares war against an Emperor who is schismatic, heretic, or otherwise usurping the rights and liberties of churches, all the faithful are bound to help the Pope, and even vassals of the Emperor may be absolved from the oath which binds them, or may be declared not to be bound; xv, q. vi, *iuratos*, and ch. *nos sanctorum*.

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*Of the means of making war and carrying it on.*

[Ch. xvii.]

Thirdly, it remains to consider the means of making war and carrying it on, and also what should be done in actual war.

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*Of the legion and the cohort, and who and how many are required therein.*

In war there are legions, and a legion has seven thousand one hundred foot-soldiers, and seven hundred and nineteen horsemen. There are cohorts, and a cohort has twenty companies. A "milliaria" cohort has one thousand one hundred and five foot-soldiers, and a hundred and thirty-five horsemen. A "quinguagenaria" cohort has five hundred and fifty-five foot-soldiers, and sixty-six horsemen. So the gloss notes in ff. De his qui not. infam., l. ii. These, then, with a general and discipline, make a war, taking war in the sense of a multitude apt and prepared for war, and not merely of the act of making war. But the two chief foundations of a war are arms and strength. These are divided into three parts, cavalry, infantry, and fleets. For cavalry protect the plains; fleets, the seas and rivers; and infantry, the hills, cities, and steep plains. Hence we may infer that infantry are more necessary to the commonwealth than cavalry, because they are useful everywhere.

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*How soldiers should conduct themselves in war, whom they should obey, and from what they are commanded to abstain.*

[Ch. xviii.]

Now soldiers should so conduct themselves in war as to keep the oath which they have taken; for they have sworn that they will strenuously perform all the orders of the Emperor, and will never desert their service, nor shrink from death in the defence of the commonwealth; ff. Ex qui. caus. maiores, the last law but one; and C. De his qui non implet. stipend., book x, l. i. They

ought to obey their generals ; l. *collatores*, at the beginning. For since the commonwealth cherishes and supports them, they ought to devote themselves to the public interests alone, and do their service by preparing themselves for war by the daily practice of arms ; C. De re militari, l. *milites*. And so they ought to obey their generals, because, if they disobey their commands, even in a good cause, they are punished with death none the less ; ff. De re milit., l. *desertorem*, § *in bello*. They ought to abstain from the cultivation of the land, from the care of animals, from trade in commodities. They should not manage the business of other people, nor engage in civil duties ; otherwise they will be deprived of their service and its privileges ; C. De re milit., l. *nemo milites*, and l. *qui militares* ; C. De locat. et cond., l. *milites* ; C. De procur., l. *militem*. They should not buy lands in the places where they serve, and at the time of their service, not even on another's account ; otherwise they are forfeited to the treasury. However, if they are not disturbed before their discharge, they will not be interfered with afterwards. There are exceptions to this rule when the treasury is administering the insolvent estate of their parents, and when they claim by inheritance. The reason of the rule is that they may not be distracted from their military duties by agricultural pursuits. See ff. De re milit., l. *milites*.

*What belongs to the office of a general in war ?*

[Ch. xix.]

A general in war should be very sparing in giving supplies to his troops ; should not allow the military horses to be taken out of the province ; should keep his troops in camp, train them to the practice of arms, not send them on his private business, fishing, or hunting ; should carry the keys of the gates, go round the watches, concern himself with the foraging of his troops, approve their food, punish fraudulent measurement, chastise offences, hear the complaints of the troops, inspect the sick. On these matters see ff. De re militari, l. *officium*. It is also his duty to place his legion on the green banks of a river, and to see that no man pollutes the water of the river in any way, or offends the public eye by washing off the sweat of horses, but to permit this to be done at a distance in the lower parts of the river. See C. De re milit., l. *ingentis*. It is also his duty to pitch the camp where there is plenty of wood, fodder, and water ; and for a stay of any length, he should choose a healthy place not too near to the sea, or an elevated place not likely to be captured by the enemy. He should consider, also, whether the field is wont to be flooded by torrents. For this see Vegetius, De re milit., book i, ch. xx. It is also his duty to fortify the camp according to the number of his men, that a large number may not be too confined, nor a small number obliged to extend itself too widely. A good general will also recognize a place in which to fight, which is considered better the higher it is. But if he hopes for victory against the enemies' soldiers from his infantry, he should choose places which are uneven, rough, and hilly ;



if not, places which are level and open, and not impeded by woods and marshes. See Vegetius, *De re militari*, book iii, ch. xiii. It is a general's duty to take cognizance of the contracts and delicts of his men ; but this is also the duty of the special " *magister militum* " ; C. *De iurisd. omn. iudic.*, l. *magisteriæ* ; and C. *De re militari*, l. *tam collatores*.

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*How soldiers are punished differently, according to their different offences.*

[Ch. xx.]

Now soldiers are differently punished, according to their different offences. Their offences are either special or common. And in their special offences they are punished by military penalties, and the penalty is often increased with the grade of service ; ff. *De re militari*, l. ii. The punishments are pecuniary fines, deprivation of rewards, ignominious discharge from the army, degradation of rank. A soldier is not condemned to the mines, nor to work in the mines, but is beheaded ; for he is regarded, not as a soldier, but as an enemy ; ff. *De re milit.*, l. iii, § i, and § *is qui*, and l. *proditores*. Death is the punishment for those who lay hands on an officer, who are disobedient, who are the first to take to flight in the sight of the others ; for spies who betray secrets to the enemy ; for malingerers who feign illness from fear of the enemy ; for those who wound a comrade with a sword, who wound themselves without cause, or attempt to commit suicide. Not however if they do so from weariness of life or impatience of pain, for these are made " infamous " ; whereas those who offend through drunkenness or lust are discharged from the service. One who does not defend his officer when he could do so is punished with death. One who could not is spared. See ff. *De re milit.*, l. *omne delictum*, and l. iii, last section. Also one who refuses to go scouting when the enemy are pressing on, or who retires from a trench, is punished with death, even if he acted with good intention ; ff. *De re milit.*, l. iii. Also a soldier who disturbs the peace is punished with death ; ff. *De re milit.*, l. iii. Also one who stirs up a serious sedition. A deserter in time of war is punished with death ; in time of peace a horseman is degraded, a foot-soldier is discharged ; ff. *De re milit.*, l. *non omnes*. Not all deserters, however, should be punished equally ; but regard should be had to their rank, length of service, and other circumstances. One who goes beyond the space for foraging is regarded as an absentee or a deserter. But the number of days by which he has returned sooner or later is taken into account, or any obstacle which may have detained him ; ff. *De re milit.*, l. iii, last section, and l. *qui commeatus*, and l. *non omnes*. His previous record is also taken into account. An absentee is one who has wandered from the camp but returned to it ; a deserter is one who, after wandering for a long time, is brought back to camp ; ff. same title, l. iii, § *emansor*. A deserter, if found in a city, is punished with death ; if found elsewhere, and if he deserts again after being captured

in his first desertion, he is punished with death ; ff. same title, l. *non omnes*. The goods of deserters are confiscated after their death ; C. De re milit., l. iv.

*Of fortitude and its nature, and when fortitude is to be called moral and when not, and when fortitude conducts war to a right end, and when not ?*

[Ch. xxi.]

But as it has been said that fortitude and arms are the chief foundations of war, and as in law the nature of fortitude is not explicitly discussed, it is desirable that its nature should to some extent be explained. And I ask, first, whether fortitude is a moral virtue ; and it appears that it is not. For fortitude is a disposition of the body ; C. book xi, De athletis, l. i ; ff. De his qui not. infam., l. *athletæ* ; ff. Ad leg. Aquil., l. *qua actione*, § *si quis in colluctatione* ; De pugn. in duello, throughout ; C. De gladiatoribus, the single law ; De torneamentis, throughout. Therefore it is not a moral virtue, since a disposition of the body differs from a habit or disposition of the soul, and is itself inferior in degree ; De pœn. et rem., *cum infirmitas* ; xii, q. i, *præcipimus* ; xxiv, q. iii, *si habes* ; C. De sacrosanctis eccles., l. *sancimus*. Secondly, it seems to be a moral virtue. Every moral virtue aims at a mean in feeling and action, as the Philosopher proves in Ethics, book ii ; but fortitude aims at a mean, as he also shows in Ethics, book iii. Thirdly, that which is not a virtue is not virtue, but rather virtues, since the plural number is satisfied by the number two at least ; ff. De testi., l. *ubi numerus* ; causa iv, q. iii, § *ubi numerus* ; and De reg. iur., book vi, rule *pluralis*. And this is confirmed by the Philosopher, in the Elenchi, book i, for the definition of preposition and of a preposition is the same, but fortitude is not a virtue. This minor premise is proved. For a virtue is opposed to two extreme vices ; dist. xli, *sæpe* ; De consuetudine, *ex parte*. But four extremes are opposed to fortitude, namely, fearlessness and timidity or fear, and audacity and deficiency in audacity, which has no proper name, as the text shows in Ethics, book iii. The Philosopher proves the opposite in Ethics, book iii. For the solution of the question we must observe that the meaning of " fortitude " is equivocal ; it may refer either to the fortitude which is the same thing as strength of body, or to the fortitude which is moral virtue. The first is a power which enables one to move a thing, as the Philosopher proves in Rhetoric, book i ; and both kinds are required in war ; and so when I said that fortitude, or strength, and arms are the foundations of war, I used the word generally, since both kinds are required. But as to the first, which is the strength of the body, there is no doubt that it is not moral virtue, for the reasons given above ; but as to the second, the question must be continued ; and it is the virtue which makes us behave aright in the matter of fear and audacity in the dangers of war. Let us pursue this kind of fortitude, for the first is plain to the blear-eyed and to barbers. Now for the understanding of the fortitude of the soul, we must observe that, in the matter of daring and fearing, one may exceed or fall short ; and in either case one acts wrongly.



One may also keep oneself to the mean, and so act virtuously. Audacity, however, differs from fear ; for audacity is a feeling of the irascible appetite, inclining us to attack what is terrible. Fear inclines us to flee, as any one may experience in himself. But either may be a good or a bad act ; for if a man were to see ten armed men and attack them alone, that would be a bad act ; and if he were not to flee, it would be a bad act, bad as regards the attacking, and also bad as regards fear. So, again, a man may exceed in fearing ; as, for instance, if there are a hundred men in a fortified place, and they see only a hundred men against them and flee—that is a bad act. So, too, by not attacking ; as if they see a city being spoiled and do not attack—that is a bad act. So you have illustrations of excess in not fearing when fear is expedient, in fearing when fear is not expedient, in attacking when attack is not expedient, and in not attacking when attack is expedient ; and so you have the extreme vices, audacity and fear, and degree in each case, as above. Further, it is to be noted that, wherever we find vicious and blameable excess of extremes, there we may find a mean which is good and laudable ; because if the whole were bad and blameable, we could not say that the defect was blameable, for the defect would be a defect of bad, and so would not be bad. It is right, therefore, that in the mean there should be a good with respect to which one quality is said to be bad by exceeding, another bad by falling short. From these arguments, two conclusions for the solution of the question may be inferred. The first is, that fortitude of the soul is moral virtue. The second, that it is *a* virtue. The first is proved ; for every habit of choosing a laudable mean is moral virtue. Fortitude is such a habit ; therefore the major is proved by the argument from definition, which is a valid argument in law ; ff. De reg. iur., l. *omnis definitio* ; ff. Depositi, l. i, at the beginning, and same title, l. *bona fides*. But the Philosopher so defines moral virtue in Ethics, book ii. The minor is proved ; for fortitude is a habit of choosing the mean with regard to fear and audacity, as the same Philosopher proves in Ethics, book iv. The argument is confirmed thus : Moral virtue is that which is bred in us by “*mos*,” that is, by custom, and that is why it is called “*moral*.” Fortitude is so bred in us ; therefore the major is proved by the argument from the formal cause, which is a valid argument in law ; ff. Ad leg. Falc., l. *si is qui quadringenta*, § *quædam* ; ff. Locati<sup>(1)</sup>, l. *rei*, § *opere* ; ff. De verborum sign., l. *ædificia*, § *perfecisse*, and same title, l. *quæ forma*<sup>(2)</sup> ; i, q. i, *detrahe* ; De bapt., *debitum*. The minor is proved. For in an act of war the sensitive appetite, on account of the dangers, inclines a man to flight, as the Philosopher says, and in war anger, which is an impetuous feeling and so inclines us to vicious extremes, claims a place for itself. But virtue, which is a rational promptitude of the appetite, inclines us to the mean ; and this promptitude is bred by repeated acts ; otherwise we should not act gladly, and so it would not be virtue, since in the virtuous man there ought to be no opposition of appetites, as the same Philosopher says in Ethics, book ii. And so the first conclusion is clear, namely, that fortitude is moral virtue. The second conclusion is that it is *a* virtue. Some authorities

prove this as follows : Fear and audacity are opposite feelings ; fortitude is the virtue between them ; therefore it is only one. The consequence is proved thus : For every agent which tends to the increase of one of two opposites, tends to the decrease of the other. And so virtue which decreases fear, increases the opposite, and conversely. This is confirmed thus : Moral virtues are fortified by their end ; but the end is single ; therefore the virtue is single. The first point is clear by the argument from the final cause, which is a valid argument in law ; ff. De quæstionibus, l. *unius*, § *si servus* ; ff. De decur., l. *generaliter* ; C. De episc. et cleric. ; causa xvi, q. i ; De appell., ch. *cum cessante* ; and De iureiurando, ch. *etsi Christus*. The second is clear. For the end of fortitude in war is the common good. And any man who makes war for the sake of gain is not brave, but rather avaricious. Others hold a different view, and say that fear and audacity are not opposite feelings. They prove it thus : Fear and audacity are compatible with one another in the same respect of the same thing ; therefore they are not opposites. The consequence holds, because, if one of two opposites is established, the other is excluded ; ff. De instit., l. *sed si pupillus*, § *si institoria* ; ff. De reg. iur., l. *ius nostrum* ; De verb. sig., l. *hæc verba* ; Authent., coll. iii, De mand. princ. ; dist. xxxii, *hospitiolum* ; and similar passages. The first point is clear. For a man may well wish to make war for the sake of what is good and honourable, and yet fear because of God ; or he may make an attack, and thus audacity is present, and yet fear that he may be injured, and thus fear is present. This opinion is against the text of the Philosopher in Rhetoric, book ii, nor is their reasoning valid, for pleasure and pain are opposites in all cases ; and yet the same act may give the same man both pleasure and pain. For example, in adultery the sensual enjoyment may give pleasure, but the dishonour, pain. So of one who throws merchandise overboard into the sea because of a storm ; and so in the case in hand the man fears because of the evil present, and dares because of his hope. The first opinion, therefore, is the truer ; and hence Albertus holds that, although there are four extremes, as above, yet they only indicate two characters. For whoever is inclined to dare rightly, does not fear ; and whoever is not inclined to fear rightly, does not dare ; and so he infers a single virtue. Others say that there are only two extremes ; for if a man fears nothing, he dares too much, and so fear and audacity make one extreme. Suffice it to conclude from the foregoing discussion that fortitude, which is one of the chief foundations of war, taken in the sense of strength of body, is not moral virtue ; but taken in the sense of a virtue of the soul, it is moral virtue, and a single moral virtue ; and it is this which conducts war to a right end.

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*Whether fortitude is a cardinal virtue ?*

[Ch. xxii.]

We have discussed the fortitude which is a chief foundation of war, and have seen that it is moral virtue and a single virtue. But as I address this



treatise to a Cardinal, I ask whether it is a cardinal virtue. It appears that it is not. For magnanimity is not a cardinal virtue ; therefore fortitude is not. The inference holds by the argument from the major, which is valid in law ; C. De neg. gest., l. i ; ff. De senatoribus, l. *qui indignus* ; C. De sacrosanctis eccles., Authent., *multo magis* ; ff. Sol. matrim., l. *ex diverso*, § i ; C. De epi. et cle., l. *si qua per calumniam* ; xxxii, q. v, *si Paulus* ; viii, q. i, *si ergo* ; vi, q. i, *imitare* ; dist. xl, *quælibet* ; De elect., *cum in cunctis*. But there seems to be more moral virtue in magnanimity than in fortitude, because it is nobler and greater, as the Philosopher says in Ethics, in the treatise on magnanimity. The first point is clear, namely, that magnanimity is not cardinal, because then there would be more than four cardinal virtues. The solution is this : The whole of human conduct does not turn on fortitude, like a hinge ; therefore it is not a cardinal virtue, because the word " cardinal " is derived from " cardo," a hinge. The consequence holds by the argument from etymology, which is valid in law ; ff. De rebus creditis, l. ii, § *appellata* ; ff. in procemio, § *discipuli* ; C. De episc. et cler., l. *decernimus* ; ff. De verb. sig., l. *tugurii* ; same title, l. *tugurium* <sup>(1)</sup> ; ff. De legatis iii, l. *librorum*, § *quod si papyrus* ; dist. xxi, *cleros* ; xvi, q. i, *si cupis* ; and De præbendis, ch. *cum secundum*. The first point is clear. For fortitude has to do only with the dangers of war ; but few men pass their lives in the company of such dangers. Therefore, etc. The contrary is supported by the authority of common speech, which places it among the cardinal virtues, and Seneca, who wrote a special treatise on it, agrees with this ; and Cicero, in the Rhetoric, divided virtue into these four as cardinal. And this argument from authority is valid in law ; C. De sum. trinit. et fid. cathol., Epistola, *inter claras* ; C. De bonis quæ liber., l. *cum multa* ; ff. De rer. div., l. *in tantum*, § *cenotaphium*.

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*Why and in what sense the four principal virtues are called cardinal ?*

[Ch. xxiii.]

As evidence for the solution of the question we must first consider why and in what sense they are called cardinal. Here we must note that, according to Albertus, just as the antarctic and the arctic poles are the hinges on which the heaven moves, and the hinges on which its doors and gates revolve, so, by analogy, those virtues are called " cardinal " on which the whole of human conduct turns, which if a man possesses, he is called simply " good," and without which he is not good. So, too, in my opinion, the lords Cardinals are so called because they are the hinges of the world, on which the whole government of the world is revolved and fashioned ; and to them it looks to sustain the whole weight of its moving government and to supply the appointed impetus for its motion. The celestial sphere is content with two poles, and these are enough ; they are stable and immovable ; they strengthen the order of its motion and do not deviate from the place where the human race is fixed.

Monastic government was content with four hinges, and these sufficed. If, when we look for the cause of number, variety, infirmity, our great distance from the centre, we have no name for it, yet the freedom of the will might supply some kind of cause. But as I have spoken of the Cardinalate in my treatise on Ecclesiastical Censure, I pass by the subject now, and return to discuss the principal question. And because law, as I said, does not fully explain the nature of the cardinal moral virtues, I will give some brief treatment of it in order to explain fortitude.

*What is virtue ?*

We must know that virtue, as the Philosopher says, is a habit of choice, and as he also lays down in the second book of the Rhetoric, everything that exists falls under choice, but that which may be chosen is threefold.

*Of the threefold species of good, and how the cardinal virtues are derived from the good.*

[Ch. xxiv.]

The good includes the expedient, the pleasurable, and the honourable ; and these goods may be either sought after or avoided by choice ; and all moral virtues have to do with these three. Let us explain each in turn. And first the good which is expedient, with which virtue is concerned in one of three ways, either by bestowing it, or by receiving it, or by preserving it. A man experiences in himself no acts of choice other than these ; and this inference from experience is valid in law, as is proved in ff. in procemio, about the beginning ; Authent., col. i, De monachis, about the end ; ff. De legat. iii, l. *si chorus*, § *his verbis* ; C. De vet. iure enucl., l. ii, § *quæ omnia* ; Sext, De elec., *quam sit*. As to bestowing the expedient, this happens in two ways ; for a man bestows either what is his own or what is another's. If he bestows what is his own, then the virtues of liberality and magnificence are practised, and the vices opposed to them, namely, avarice and prodigality, meanness and vulgarity. But if he bestows what is not his own, then he may either distribute it to those to whom it belongs, and this is justice ; ff. De iust. et iur., l. *iustitia* ; and Instit., same title, § *iustitia* ; xii, q. ii, *cum devotissimam* ; or he may distribute it to those to whom it does not belong, and this is injustice, as appears from the converse of the laws just cited, which is a valid argument ; ff. De offi. eius cui mand. est iurisdictio, l. i, § *huius rei* ; ff. Mand., l. *si per procuratorem*, § *ignorantes* ; and De his quæ fi. a prælat., ch. *cum apostolica* ; and De conversatione coniugatorum, ch. *cum virum*. In not rendering things to those to whom they belong a man is said simply to be " bad " ; xiv, q. vi, *si res* ; De usuris, *cum tu* ; ff. De usurp., l. *sequitur*, § *quod autem*. It is clear that justice is cardinal, because



if a man has not justice when he distributes what is not his own, he is simply "bad," whereas liberality and magnificence, which concern the distribution of what is one's own, are not cardinal, because one who distributes his own ill, is not simply "bad," but might well be called "foolish"; and so you have one cardinal virtue, justice, concerned with the bestowal of the good which is expedient. Again, if moral virtue is concerned with the act of receiving the expedient, this may occur in two ways. For a man either receives what is his own or owing to him, or what is another's and not owing to him. If he receives what is his own or owing to him, and from one from whom he ought not to receive it, he sins against liberality and magnificence, yet he is not simply "bad." But if he receives what is another's, he is simply "bad." Hence the law gives remedies against such a person, such as the interdicts, "*Vnde vi bon. rapt.*"; ff. and C., under that title; actions of theft, and condictiois, in accordance with laws and canons which are explained in each case according to the variety of acts. And so by an examination of this second act, namely, the act of receiving the good which is expedient, it appears that justice has a cardinal character, whereas liberality and magnificence have not, since the opposite of the just man is called simply "bad," whereas the opposite of the liberal or magnificent man is not. Again, if moral virtue is concerned with the act of retaining the good which is expedient, this also may happen in two ways; for a man retains and preserves either what is his own, or what is another's. In the first case by retaining what is his own, and giving it to no one, he sins against liberality and magnificence; but such a man is not simply "bad," although, if you press the question, a rich man who sees a poor man dying of want and gives him nothing, sins mortally. The answer may be that he then retains what is not his own, but common, since at a time of such need there should be community of goods, as Clement proves by six reasons, xii, q. i, *dilectissimis*, and Augustine, quoted dist. viii, *quo iure*, and § i. But if a man retains what is another's, he is simply "bad," and is called "unjust," provided that he retains it against the owner's will; and the law provides remedies against him, as to which see above. So in the matter of the good which is expedient, you arrive at one sole cardinal virtue, in distributing, in receiving, and in preserving it, because its opposite makes a man simply "bad." Justice is cardinal; liberality and magnificence are not cardinal; and this is clear.

I said in the second place that there was a second kind of good, the pleasurable, with which moral virtue is concerned; and it is concerned with it in two ways, either by bestowing it or by receiving it. In the matter of bestowing it, there are the virtues which are found in games, when one bestows pleasure on others. And such are friendship, affability, and wit. But these virtues are not cardinal, because they are not necessary to human nature, because many persons are great and virtuous who do not know how to conduct themselves aright in such matters. As to receiving the pleasurable, this also may happen in two ways; for either a man is chiefly concerned with what is

pleasurable, and then he is called simply "bad," and the quality is called "intemperance"; and I mean that a man is "bad" by exceeding, for the "insensible" man, the man who takes no pleasure, is not simply "bad," but the man who exceeds is; and so you have temperance as a cardinal virtue, because its opposite makes a man simply "bad," and temperance is necessary to human preservation. But if he is simply concerned with what is sorrowful, this again may happen in two ways; for there are some sorrowful things which are apt to stir a man to anger, and then "gentleness" comes in; but this is not cardinal, because it is not necessary that a man should be angry, but he is saved by the act from passing to the second external act of injustice. But if he should pass to the external act, then it would be called injustice. But there are also sorrowful things whose effect is to inspire fear, and then fortitude comes in. For as the man who will not bear what is terrible for the sake of the good of virtue is simply "bad," fortitude is a cardinal virtue. So much as to the pleasurable good.

I said, further, that there was a third good, the honourable, and this is threefold. One kind concerns "cognizant" virtue, and these are the intellectual virtues; and they are knowledge, wisdom, intellect, art, and prudence. Another concerns "interpretative" virtue, involving questions of veracity and falsity. Another concerns "appetitive" art.

Let us take the second form, that which concerns interpretative virtue. I say that the veracity which regards interpretative virtue is not a cardinal virtue, because it does not make a man simply "good," nor does its vice make him simply "bad." For the vice opposed to it is rather "boastfulness." But the boaster is of three kinds: for he may be a simple boaster, one who boasts for the sake of pleasure; or one who boasts for the sake of honour; or one who boasts for the sake of gain. The first kind of boasting alone is directly opposed to veracity; the others approach another kind of vice. For the first man sins only because he is mendacious; but there are two kinds of mendacity: for there is the mendacity which is a simple false signification of the voice, and of that I have said that it is directly opposed to veracity; the other is a false signification of the voice with the intention of deceiving, and that makes a man simply "bad," and falls under the head of injustice. Augustine, in his book "De Mendacio," treats both of these and of other species of mendacity. It is quoted in xxii, q. ii, ch. *primum capitale*. Another form of the honourable good is, as I said, that which concerns appetitive virtue. And it concerns it in two ways. Either "essentially," and such are the moral virtues which I mentioned above. Or "significatively," and such are glory, and worldly goods; and the virtues concerned with this form of the honourable good are magnanimity and , and these are not cardinal virtues. For many men are virtuous who do not desire the honours which they deserve. But if we speak of the honourable good which concerns cognizant virtue, then there are the intellectual virtues: knowledge, intellect, art, prudence. The first three are not cardinal, because they are not necessary to human life; but prudence



is necessary to the good. Nay, it is impossible that any one should be virtuous without prudence ; for prudence regulates the other virtues.

These considerations show us how fortitude, which is the object of the discussion, is a cardinal virtue. And we see how they are four in number, and deducible from the threefold good which may be either sought after or avoided, and the threefold virtue of the soul, namely, justice, temperance, fortitude, and prudence, which last is not only cardinal, but is head and chief among them all.

This has been in some measure a digression ; but I may be excused, because I have not presumed for jurists alone to explain the nature of fortitude, which has been the principal subject of the discussion.

*How and in what sense a man may be called " brave " in war.*

[Ch. xxv.]

My next question is whether a man may be called " brave," even though he has not been trained in the dangers of death in war. It appears that he may ; for fortitude is necessary to human goodness, since it is cardinal, as I showed in the last question, and human goodness is possible without warlike training. Therefore the consequence is proved by the argument from conjunction ; ff. De neg. gest., l. *atqui natura* ; dist. iv, *denique* ; dist. vi, *nunc de superfluitate*. The first point is clear from the citations to the last question. Also Cicero says that fortitude is the deliberate facing of dangers and endurance of hardships. But this is possible without any warlike act ; and so the consequence is proved by the argument from consequence destroyed, which is a valid argument in law ; ff. De rebus creditis, l. ii, § ii ; C. De furt., l. *apud antiquos*, the word *quam* ; ff. De in integr. restit., [*nemo*] *non videtur*. The Philosopher says the contrary in the fourth book of Ethics. And this is why the oath of the soldier contains a promise not to shrink from death ; ff. Ex quibus causis maior., the last law but one ; and C. book x, De his qui non imple. stip., l. i. For the solution of the question we must observe that the word " fortitude " is commonly used to denote all firmness of mind, and this is a quality common to all the virtues ; for inconstancy of mind meets with reproach and with the reprobation of law ; xxxii, q. v, *horrendus* ; De iureiurando, *quemadmodum* ; ff. De adulteriis, l. *si uxor* ; ff. De decur., the last law but one ; ff. De neg. gest., the last law but one ; De reg. iur., book vi, rule *quod semel*, and rule *mutare*. And in this sense there could be no doubt that a man might be brave without meeting the dangers of war. But the strict meaning of " fortitude " is, a special virtue which inspires a man to meet and await dangers for the sake of avoiding the evil of dishonour. Now the bad is threefold : the injurious which is opposed to the expedient, the sorrowful which is opposed to the pleasurable, dishonour which is opposed to the honourable. But the good of the soul which is honourable is to be preferred to the expedient

and the pleasurable goods, just as the rational soul is to be preferred to the body; xii, q. i, *præcipimus*; xxiv, q. iii, *si habes*; C. De sacrosanctis ecclesiis, l. *sancimus*; De poenit. et rem., *cum infirmitas*. This leads us to the conclusion that there are three moral virtues which are necessary before a man can be called good and virtuous. There is one which fixes his mind to prefer the honourable to the expedient, and this is justice; Instit., § *iustitia*; xii, q. ii, *cum devotissimam*. Another strengthens his mind to prefer the honourable to the pleasurable, and this is temperance; dist. vi, pal., *sed pensandum*; and De constit., *nam concupiscentiam*. Another strengthens his mind to bear sufferings rather than incur the evil of dishonour, and this is fortitude; C. book x, De athlet., the single law; C. De his qui non implet. stip., l. i, in the same book; vii, q. i, § *hinc etiam*. And this is the fortitude which is the subject of our discussion. And these are rightly called cardinal, because they are necessary to human goodness, and any one of them defends itself and any one of the others. Take an example. A woman tempted to adultery by promises defends herself by temperance; ff. De rit. nup., l. *palam* ii. If she is tempted by terror, she defends herself by fortitude; xxxii, q. v, [*Lucretiam*] *proposito*, § *Lucretiam*, and [ch.] § [*fieri*] *non potest fieri* and [ch.] § *finge, de pudicitia*; xxxiv, q. i, *non satis*. But if she is tempted by rewards, she defends herself therefrom by justice; xii, q. ii, *cum devotissimam*. Fortitude may also be illustrated in this way; for if she hesitates on account of fear, she defends herself by fortitude; xxxii, q. v, ch. [*Lucretiam*] *proposito*, and [ch.] § *finge, de pudicitia*. If she is tempted by the pleasurable sensations, then she defends herself by temperance; xxxii, q. v, *non potest*, and ch. *nec solo*, and ch. *qui viderit*, and ch. *non mæchaberis*. If by rewards, then she defends herself by justice, because it is as unjust to sell the good which is honourable as that which is spiritual; i, q. ii, *quam pio*; De simonia, throughout. If she is tempted by false reasons, then she defends herself by prudence; and so one of the cardinal virtues strengthens her mind to prefer the honourable to the expedient, namely, justice; another, to prefer it to the pleasurable, namely, temperance; another, to bear sorrows for the sake of guarding the good and excluding the evil of dishonour, namely, fortitude. But prudence regulates the others, and so ought to be included among the cardinal virtues.

*It is further to be noted that war is undertaken in two ways.*

[Ch. xxvi.]

It is undertaken in one way because of an act of war on one side or the other; ff. De captivis, l. *in bello*, and l. *postliminium*; C. book xi, De gladi., the single law. It is undertaken in another way because of an expectation of bodily danger, even without actual attack, but only if there should be a danger which might probably be resisted; otherwise it would not be a war, just as it is not war when a robber is hanged or any one else is brought to justice.



If war is undertaken for an actual attack on one side or the other, fortitude is not concerned with those dangers only, for then it would not be cardinal, since many men are virtuous who have had no training in such dangers. But if it is undertaken in the second way, then fortitude is concerned with those dangers generally, as we say of a woman who faces dangers in order to protect her chastity. In her case there is no war in the first sense, but in the second there is, and yet fortitude is present. We must note, however, that fortitude is not concerned with all warlike dangers. For if one man attacks another and defends himself, he is not brave; otherwise we should have to say that a dog is brave and shows fortitude. But when a man faces warlike dangers for the sake of avoiding the evil of dishonour, then he is brave. Hence the Philosopher says that a man is not made brave by necessity; hence, also, cause xxiii, q. iv, *Nabuchodonosor*, and ch. *de Tyriis*; De Pœnit., dist. ii, *sic enîm*. Thus we reach a solution of the question proposed when we ask whether fortitude is concerned with the dangers of death and war; and we must say that it is not, as was illustrated in the case of the woman. In a second sense, inasmuch as the extreme act of fortitude is concerned with the dangers of death, we must say that it is, because virtue is concerned with what is difficult. In a third sense, inasmuch as it inclines us to meet the danger of death, should occasion arise, we must say that it is, because virtue extends to the limits of a man's power; De Cœlo et Mundo, book i.

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*Which is the chief act of fortitude in war?*

[Ch. xxvii.]

But I ask, which is the chief act of fortitude in those who are at war, awaiting the enemy, or attacking them? And it seems that attack is the chief act of fortitude. Firstly, because, as the Philosopher says in the second book of the Ethics, in the treatise on liberality, it is more virtuous to give than to receive. Also it is written in Ecclesiasticus, ch. iv, "let not thine hand be stretched out to receive, and closed when thou shouldest repay." Hence the text, "it is more blessed to give than to receive"; xvi, q. i, *prædicator*; and De celebr. missar., *cum Marthæ*; De donat., ch. i. Therefore, by analogy, it is more virtuous to attack than to await, because one who attacks gives, and one who awaits receives. Moreover it is more virtuous to do well than to receive well, as the same Philosopher shows. This is proved thus: For if it is better to do than to suffer in the virtues generally, it follows that it is better to do well than to suffer well. The consequence holds by the argument from connexion, which is a valid argument in law; ff. De neg. gest., l. *atqui natura*; dist. iv, *denique*; dist. vi, *quia de superfluitate*. But he who attacks gives well, he who awaits receives well; therefore it is more virtuous to attack. Moreover, it is better to do well than not to do ill; and in this connexion it is not

enough to abstain from evil, unless we also do good ; for this act of doing good leads to a better end, since in actions it is the end that is weighed, and from that the action takes its name. The consequence holds by the argument from the end, which is valid in law ; ff. De ritu nupt., l. *si quis* ; ff. De iur.isci, l. *non intelligitur*, § *si quis palam* ; ff. Communia præd., l. *receptum* ; ff. De auro et arg. legat., l. *et si non sint*, § *perveniamus*. But to attack is to do well, to await is not to do ill, that is, not to flee ; therefore it is more virtuous to attack than to await. Further, that which is more difficult is more virtuous. For even an opinion on a law is only given on a difficult and doubtful matter ; ff. De Carbon. edicto, l. *quod Labeo* ; and ff. Ad municipalem, l. i, at the end. But to attack is more difficult than to await ; for a tired man can await, but he can not attack. The major is proved by the same Philosopher, in the treatise on fortitude, for an act of fortitude is specially concerned with what is difficult and terrible. Moreover, that which is more lovable is more virtuous ; for acts of virtue are by their nature lovable, as the same Philosopher says ; and this is proved by De Pœnit., dist. ii, *ergo*, and ch. *corpus*, and ch. *proximos*. But to attack is more lovable. And observe how it brings more advantages to the commonwealth, and more things in the same genus are preferred to fewer : Authent., De consan. et uter. frat., at the beginning ; De sent. excom., *cum pro causa* ; iii, q. iv, *Engeltrudam* ; De offi. delegat., *prudentialiam*, at the beginning ; because to expel the enemy is more useful than to await them. Moreover, a thing which is more praiseworthy is more virtuous, because moral virtue is a praiseworthy good ; but to attack is more praiseworthy than to await. For, as a rule, those who attack are more praised than those who flee. To the contrary is the text of the Philosopher in Ethics, book iii, in the treatise on fortitude, where he says that the greater act of fortitude is to endure. Albertus and Custratius hold the same opinion on the point.

By way of evidence on this question, we should observe that, according to the dictates of right reason, it is not right always to attack, nor always to flee, nor always to await ; for sometimes it is expedient to attack, sometimes to flee, sometimes to await. From which it appears that acts of fortitude are threefold ; namely, attack, flight, and waiting. And that a brave man should sometimes flee is obvious by reason, for one should flee from dangers which are beyond a man's strength. For if one man alone should wish to attack a thousand, or to await their attack, he would not be brave, but audacious and rash, as the same Philosopher says in the same passage. Acts of fortitude, then, are threefold ; namely, attack, flight, and waiting. And among these the least is flight. This is proved thus : For an act which is less difficult than others is the least of those acts, since art and discipline are concerned with difficult things. But to flee is easier than to attack or await. Therefore, &c. Moreover, an act which is assimilated to a worse vice is the least act. This is proved by the argument from extremes, which is valid in law ; ff. Comuni divid., l. *arbor* ; and ff. Si quis ius dic. non obtemp., l. i ; and ff. De stat. hominum, l. *quæritur*. So it is in the case proposed. For by flight



a man is assimilated to fear, which is a worse vice than audacity, as the same Philosopher says in the same passage.

Secondly, I say that waiting is the more important act. This is proved ; for it is more virtuous to do good aright than to receive it aright. Therefore it is more virtuous to suffer evil aright than to do it aright. The consequence holds by the argument from opposites, which is valid in law ; ff. De act. emp., l. *Iulianus*, § *procurator* ; ff. De instit., l. *sed si pupillus*, § *si institoria* ; ff. De verb. sig., l. *hæc verba*. But one who attacks does evil rightly to the attacked, whereas one who awaits an attack, suffers evil rightly from the attacker. Further, an act which is more difficult is more important. This has been proved above many times. But waiting is more difficult than attacking. This is proved thus : For if an attack is made, it is made after the manner of one who is stronger, and with the hope of escaping ; otherwise, if there were no hope of escape, right reason would not dictate an attack. But in waiting, it is the less strong who awaits the stronger. But it is more difficult to conduct oneself rightly in face of a stronger than in face of one less strong, as is obvious. This is confirmed thus : For in waiting, one has to control great fear amid bodily sufferings. But in attacking, one need not control so great a fear. Therefore, &c.

Further, waiting and enduring denote continuance and perseverance, and in the genus of what is good that which is more continuing is better ; De Pœnit., dist. iii, *irrisor* ; De Pœnit., dist. ii, *pennata*, and ch. *non revertebantur* ; ff. De in rem vers., l. *si pro patre*, § *et versum*. But attack denotes an impetus of short duration proceeding from anger ; ff. De adulter., l. *si adulterium*, § *imperator* ; C. same title, l. *Gracchus* ; and ff. De reg. iuris, rule *quod calore*.

Moreover, waiting brings one face to face with the dangers of death, and they are then difficult and fearful, as the Philosopher says in Rhetoric, book ii. Therefore, &c.

We infer, then, that waiting is the more important act of fortitude, although the vulgar, who judge incorrectly, are of the contrary opinion. But if what I said about flight being an act of fortitude appears inconsistent with what I wrote above in this treatise, in the article on the duties of a general and soldiers, where I said that soldiers ought to keep the oath by which they have sworn not to flee, &c., the solution is clear from what has already been said ; for where dangers are beyond a man's strength, he ought to flee ; xxiii, q. iv, *displicet* ; John, ch. viii, Matthew, ch. x, quoted vii, q. i, § *hoc observandum*. But where dangers are not beyond a man's strength, but there is some small hope, then what I have just said holds. The answer to the citations to the contrary is clear if we run through them singly ; but we must add one thing, which is, that the vulgar applaud and love those who attack more than those who wait. Hence what the Philosopher says on the same subject, that nothing prevents hired soldiers being more useful in states than brave men, for the former barter their life for a trifling gain, and flee and attack without the dictation of reason, whereas brave men neither flee nor attack without the dictation of reason.

*How many kinds of fortitude are practised in war?*

But I ask, how many kinds of fortitude are practised in war? Solution: There are six likenesses of true fortitude, which is a moral virtue between audacity and fear, and these six are practised by soldiers in war.

The first is that which inspires men to attack manfully in war for the sake of glory and honour, seeing that men applaud those who do so, and blame the timid; and on this see C. book xii, De re milit.; ff. Ad leg. Aquil., l. *qua actione*, § *in colluctatione*; De pub. iudic., throughout.

The second, which is called "political," is that which makes men brave because of the fear of bodily or pecuniary punishment, which is imposed on the timid and those who flee in war; and this is called "political," because it is found among citizens, and such fortitude is servile; De Pœnit., dist. ii, § *sicut secta*.

The third is that which is called "military," by which men are brave because they know the arts of war, like the Teutons and other expert mercenaries. Experience, the mistress of things, induces this kind of fortitude; ff. De leg. iii, l. *servis*, § *ornatricibus*; and Sext, De elect., ch. *quam sit*; and as the Philosopher says in the treatise on fortitude, mercenaries fight with others like armed men with unarmed. And they are ready to attack and ready to flee. To-day, however, they extricate themselves more easily, because they lift a finger and pull down visors, and they surrender, and are dismissed at once, as is their custom among themselves.

The fourth is the fortitude inspired by rage; for rage is a thing that impels men to danger, and it is sometimes helpful in war, because men are bolder, and the impulse of anger induces this kind of fortitude; ff. De adulter., l. *si adulterium*, § *imperatores*; and C. same title, l. *Gracchus*; and ff. De reg. iuris, l. *quod calore*.

The fifth is that which hope inspires; for some men attack manfully because of the hope of victory, for in them the hope of power is stronger than the sensitive reason; De constit., *nam concupiscentiam*; dist. vi, *sed pensandum*.

The sixth arises from ignorance; for men sometimes attack and await in ignorance of the dangers which threaten them, who would nevertheless flee if they knew of them. In this case a man is like an infant, and does not see what he is doing; C. De fals. mone., l. i; ff. Ad leg. Corn. de sica., l. *si infans*.

These are the kinds of fortitude ordinarily practised by soldiers in war. But if you wish to know which among them approaches most nearly to virtue, you should observe that they are all merely likenesses of true fortitude; for in true fortitude, as in any virtue, the act must be done consciously. For there is no virtue in those who act in ignorance, because prudence, which is a state of the intellect, ought to control every act of virtue. Secondly, virtue must be chosen. Thirdly, it must be chosen because of its own intrinsic goodness, and not because of any extrinsic good. Fourthly, the act must be steadfast and



lasting. Fifthly, it must be done gladly. Sixthly, it should be difficult, for art concerns difficult things. All these qualities are required in true fortitude, whether in attacking, or in awaiting anything terrible and difficult. These considerations show us which of the above more nearly resembles true fortitude, and which does not. For all except the last resemble it in being conscious, and so the last is least like it in this point. In the point of being deliberately chosen, the others agree with true fortitude, except that which arises from rage. But in the need for being chosen for its intrinsic goodness, they all fall short of true fortitude ; for the first is chosen for an extrinsic good, namely glory, another for the sake of avoiding a penalty, another for gain and pay, another for hope of victory. But the first, or "political," fortitude, which is chosen for honours and glory, is nearer to true fortitude, because of its more honourable end. For honours are significant of the virtues, and such men do more towards the public good, for they devote themselves more manfully to wars, as in the example given by the Philosopher, of Hector, who conducted himself thus in affairs of war.

*Whether a brave man in war ought to await death rather than to flee ?*

[Ch. xxviii.]

Thirdly, I ask whether a brave man in war ought in some cases to await death rather than to flee from the war, when by flight he might escape it. And it seems that he should not wait for death ; for one ought to choose that which is more pleasurable rather than that which is less so, as the Philosopher says in Rhetoric, book i. But life is more pleasurable than death ; therefore, flight and life should be chosen, rather than waiting and dying. The Philosopher seems to say the contrary in Ethics, book iv, in the treatise on fortitude, and in book iii, in the treatise on the voluntary and the involuntary, and also in the treatise on magnanimity, where he says that a man should die rather than commit a base act.

Solution : We must observe for our guidance that the question may have a double foundation. One is the foundation of truth and faith, based on our belief in another life of blessedness. And according to this foundation the question would not admit of serious doubt ; for if a man were fighting against the infidels, and if his flight would cause the death of many of the faithful and save himself alone, then he should rather choose to wait and die. And the reason is, that by fleeing he wins his bodily life, whereas by waiting and meeting the death of the body, he wins the life of the soul, which is without comparison nobler, and therefore to be chosen.

The second foundation of the question concerns those who live according to the law of nature, without belief in a future life ; and then the question admits of doubt and various opinions. Some say that the death to be expected may happen in many ways. In one case it may be quite certain that death must happen if a man waits, and there may be no hope of safety except in

flight. In another case, although there may be some probability of death, yet there may be some hope of life without flight. In this second case they say that a man should observe the authority of Aristotle and other philosophers, who say that he ought rather to die, that is, to fight like a man. But in the first case they say that he ought in no wise to wait for death. They prove this by the argument that of two ills the less should be chosen ; dist. xiii, *nervi* ; and this is a first principle of morals. But flight is a less ill than waiting to die. That it is a less ill is proved by the argument that a thing which causes the loss of fewer good things is a less ill than that which causes the loss of more ; but death destroys everything ; Authent., De nupt., § *deinceps* ; and Physics, book ii. In flight, the only good thing lost is moral fortitude. Therefore, &c. Moreover, if it were better to die, it could only be because to die is an act of virtue ; but this is false, for an act of virtue either is happiness, or tends to an act of happiness. But death destroys happiness. Therefore, &c. Moreover, if in this case death ought to be chosen, it would be because fortitude, which is a moral virtue, inclined to this course. But this is false, for moral virtue does not tend to the corruption of nature, but rather to its conservation. For laws have been made with this object ; dist. iv, *factæ sunt* ; but death tends to destruction ; Authent., De nupt., § *deinceps*. Moreover, if a man ought rather to choose this course, it would be for the sake either of his own good or of another's. It is not for his own, because death extinguishes all good, as was shown above. It is not for another's, because he cannot win for another as great a good as he loses for himself, since he ought to love himself more than others ; C. De servit. et aqua, l. *præses*. The conclusion is thus confirmed. For it appears that the most virtuous soldiers used to flee in war, without sacrificing truth and faith, as in the time of Charles the Great.

Others hold exactly the opposite view, namely, that a man ought to wait and die rather than flee. And they prove it thus : For any man knows that he must needs die ; therefore, if he dies bravely, he only loses that in which he believes a present to differ from a future death. But these two do not differ in any matter of losing or preserving the good things of virtue, but only in retaining them for a longer or shorter time. They also argue that a thing whereby more good things are acquired and fewer lost is more to be chosen ; and so it is in the case proposed. Therefore, &c. This minor premise is proved thus : For if a man dies, he wins an act of fortitude, which is most noble. If he flees, he wins nothing, save a continuance of what he had before as long as his life lasts, and so he wins time. The conclusion is thus confirmed. For it is certain with regard to the pleasures of the body that men would rather choose to live a short time pleasurably than a long time in pain ; therefore this should rather be chosen where the question concerns the pleasures of the soul.

I believe the first opinion to be true, because, as I said in another article, the acts of fortitude are attack, flight, and waiting. For a man should not always be pressing on, nor always fleeing, nor always waiting ; he should rather follow the dictation of reason.



*Whether a soldier should be punished with death, who bravely charges the enemy with his company and utterly routs them, contrary to the commands of the general ?*

[Ch. xxix.]

Fourthly, I ask this : Suppose the general of an army has commanded that no one should charge the enemy on pain of death. A certain very active soldier, with a large company under him, contrary to the general's command, charged the enemy, and by his activity utterly routed them. The question is, whether he should be punished with death. And it seems that he should ; for the text says that in war one who does a thing forbidden by the general, or disobeys his commands, is punished with death, even if what he does turns out well ; ff. De re militar., l. *desertorem*, § *in bello*. This is proved by the laws which secure that persons bound to obey should be held to obedience ; ff. Mandati, l. *si remunerandi*, § *si [pignus] passus* <sup>(2)</sup>, and l. *sed Proculus* ; ff. Ad Macedon., l. *sed etsi*, § ii <sup>3)</sup> ; ff. Ad leg. Aquil., l. *si servus servum*, § *et si puerum* ; C. De neg. gest., last law ; and similar passages. It is thus confirmed : For an evil is not excused because of a good which follows from it ; dist. lvi, *undecunque* ; De Pœnit., dist. i, *non sufficit*. It is also confirmed thus : For acts are not to be judged by the event ; xv, q. i, *illa*, and ch. *non est* ; xxiii, q. v, *de occidendis* ; ff. De neg. gest., l. *sed an ultro*, § i ; ff. Mand., l. *qui mutuam*, § *sumptus* ; ff. De contraria tut., l. iii. Therefore the signal event in this case will not be considered, but rather the preceding obedience.

Arguments to the contrary are these : A penalty which ought otherwise to be imposed on one who attempts a thing forbidden by a law, or by the command of the prince, is remitted for the sake of skill and a great service effectively rendered. This is proved by ff. De pœnis, l. *ad bestias* ; xxii, q. ii, ch. *quæritur cur Patriarcha*.

Solution : I hear that the lord Richard Malumbra determined that an offender should escape, for his great skill, the penalty imposed by the said law *ad bestias* ; and the ch. *quæritur cur Patriarcha* might also be quoted. Yet I do not think that this opinion is true ; nay, it is obviously contrary to the text ff. De re militari, l. *desertorem*, § *in bello*. Nor do the laws cited to the contrary conflict ; for it is one thing that a man should not incur a penalty imposed by a law or by a man, another thing that after the penalty has been incurred it may be remitted by the prince. Those laws do not prove that the penalty is not incurred ; but they rightly prove that it may be remitted by the prince, and so they assume that it has been incurred, as both texts prove, if properly examined.

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*Whether quarter should be granted to the general of a war when captured ?*

[Ch. xxx.]

Fifthly, I ask this : Suppose the general of a war is captured by the enemy, should quarter be granted to him, or should he be punished ? And it seems

that quarter should be granted, by xxiii, q. i, ch. *noli*, at the end. For example, the text, "as violence is rightly meted out to one who fights on and resists, so quarter is granted to the vanquished or the captured." This is proved, for a text says that one is bound to spare one's enemy; ii, q. v, *quanto*, at the end. For example, the text, "because, just as it is right that we should be severe on those who persist in their contumacy, so we ought not to refuse pardon to the humbled and the penitent."

An argument to the contrary is that a captive becomes the slave of the enemy; ff. De captivis, l. *hostes*; and ff. De verb. significatione.

Solution: I believe the first statement to be true, namely, that quarter should be granted to one who humbles himself and does not try to resist, unless the grant of quarter gives reason for fearing a disturbance of the peace, in which case he must suffer. This is proved by the text in ch. *noli*, at the end, where it says, "especially when disturbance is not feared"; and Hugo and the Archdeacon explain that "especially" is used for "only," so that the sense of the passage is that quarter is to be granted only when disturbance of the peace is not feared, and otherwise not. And it is said that on that interpretation Charles caused Conradin to be beheaded.

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*Of those who are bound to participate in war, and of those who  
participate without being bound.*

[Ch. xxxi.]

Fourthly, it remains to consider those who are bound to participate in war, and those who participate without being bound.

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*Whether vassals are bound to participate at their own expense, when  
a lawful war is begun by their lord?*

And I ask, first, whether, if a lord begins a lawful war, his vassals are bound to join in it with arms and horses, and at their own expense. And it seems that they are, because they are bound by the force of their oath to help their lord; xxii, q. v, *de forma*. Innocent, in De iureiur., ch. *sicut*, holds that they are not bound, unless they have undertaken this obligation by special agreement, since they are not bound to render personal services. Conclude on this point that vassals are not bound by law, except to the duties contained in xxii, q. v, ch. *de forma*, unless they have undertaken the obligation by special agreement.

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*Whether the subjects of a baron, who begins a war against his king, are bound to help the baron against the king ?*

[Ch. xxxii.]

Secondly, I ask this : Suppose a baron of the King of Spain begins a war against the king himself, and commands all his men to help him in the war against the king, are they bound, when they have sworn to help him against all men ? And it seems that they are, for it is a serious thing to break faith ; Qui cleri. vel voventes, *veniens*, and the following chapter ; ff. De consti. pecunia, l. i. Also general words are to be understood generally ; ff. De legat. præstan., l. i, § *generaliter*. Also because an oath is binding, unless one is absolved from it ; xv, q. vi, chs. ii and iii. The contrary is true ; for a baron who begins a war against the king breaks the *lex Iulia maiestatis* ; ff. Ad leg. Iul. maiest., l. i, and l. ii ; vi, q. i, § *verum*, the words *quisquis cum militibus* ; dist. lxxix, ch. ii. For the King of Spain is the prince in his own kingdom. Also, one who helps another to sin does not give help at all ; xiv, q. vi, *si res* ; nor would his command excuse them ; ff. De oblig. et act., l. *servus* ; xi, q. iii, *non semper*, and ch. *qui resistit*, and ch. *si dominus*. Nor does the oath bind to this, because it was not meant to be a bond of iniquity ; xxii, q. iv, *inter cetera* ; Sext, De iureiur., ch. i ; and the notes to De iureiurando, ch. *petitio*.

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*Whether subjects are bound to help first a baron who begins a war against another baron, or the king who begins a war against another king, both commands being received at the same time ?*

[Ch. xxxiii.]

My third question is this : A baron of the King of Spain begins a war against another baron, and the King of Spain begins a war against the King of Granada. The baron summons men to help him ; but the king summons the same men to help him ; and the summonses are simultaneous. Whom are they bound to help first ?

It seems that they should first help the baron, for they are his subjects by reason of fealty and by reason of jurisdiction ; Authent., coll. vi, De quæstore, § *si vero*. But they are the king's subjects only by reason of his general jurisdiction, and so the two reasons prevail over one ; Authent., De consang. et uter. frat., § i ; Sext, De re iudic., *cum æterni* ; dist. xiii, can. i.

To the contrary is the argument that persons summoned by the king are summoned to a higher tribunal, and so this summons should be preferred ; ff. De re iudic., l. *contra pupillum*, last section ; dist. xviii, *si Episcopus*. Also because the king summons them for the common good and the defence of the crown, and so they are bound by the law of nations to obey ; ff. De iustitia et iure, l. *veluti* ; dist. i, *ius gentium* ; xxiii, q. iii, *fortitudo*, and q. viii, ch. *omni*, and ch. *si nulla*. For in defence of one's country it is lawful to kill a father ; ff. De relig. et sumpt. fun., l. *minime*. And this is the true view.

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*Whether the non-liege vassal of two lords, summoned by both at the same time, is bound to help both, or one, and if so, which ?*

[Ch. xxxiv.]

My fourth question concerns a non-liege vassal of two lords, a case which may arise by reason of different fiefs ; Sext, De suppl. negl. prælat., *grandi*. If each of the lords requires him at the same time to help him in war, is he bound to help both, or one, and if so, which ?

It appears that he need help neither, since the two claims cancel one another by their coincidence ; ff. De usufr., l. *quotiens* ; De Pœnit., dist. i, § *hoc idem*, words *Christus ait* ; xxi, q. i, ch. i.

It appears that he must help both ; otherwise he will lose his fief, because a difficulty of performance on the part of the promisor does not discharge an obligation ; ff. De verb. obl., l. *continuus*, § *illud*. Also, a man can serve two masters ; ff. De operis libert., l. *duorum*. Some say that he may choose, on the analogy of the slave of two masters, who, if he sees both masters being killed, may help which he likes ; ff. Ad Silianum, l. *si quis in gravi*, § *si cum omnes*. Others say that he must help that master to whom he first took an oath ; Vsus Feudorum, De prohib. feud. alien., l. *imperialem*, § *illud* ; ff. Locati, l. *in operis* ; C. Qui potiores in pign. hab., l. ii. For he is bound to keep the earlier fealty ; dist. i, *quia sanctitas tua* ; Qui cleri. vel vov., *veniens*.

It is safer, however, for him to serve the first personally, and the second by means of a substitute, if the nature of the fief allows this ; C. De caduc. toll., the single law, § *sin autem*. Nor does it matter that his oath to the second saved his fealty to the first, which is of the nature of a non-liege man, because by serving the second by means of a substitute he does not injure the first, which was what the oath to the second saved.

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*Whether a vassal is bound to help his lord against his father, or a father against his son ?*

[Ch. xxxv.]

My fifth question is whether a vassal is bound to help his lord against his father, or a father against his son. The gloss on xxii, q. v, ch. *de forma*, puts the question and holds that he is. For a son is bound to his father only by the tie of nature, but a vassal is bound to his lord by the tie of an oath ; see the chapter *de forma*, above cited. The text in Vsus Feud., ch. *quemadmodum feud. amit.*, proves this. The gloss on xi, q. iii, ch. *quoniam milites*, somewhat inclines to the contrary view. I should think that the quality of the assistance to be rendered should be considered.

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*Whether a citizen of two states is bound to help one against the other ?*

My sixth question is whether a citizen of two states is bound to help one against the other. Solution : Apply what was said of a vassal with two lords.

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*Whether a vassal summoned by his lord is bound to follow him in parts beyond the sea to fight against barbarians ?*

[Ch. xxxvi.]

My seventh question is this : A lord wishes to go to remote parts, say beyond the sea, to fight with the barbarians ; is a vassal, summoned by him, bound to follow him to the war ? Solution : If the lord is of such status and condition that his predecessors and he himself have been accustomed to make such expeditions, and his vassals to follow him, then the vassal is bound, on the analogy of the freedman, who is bound to render the usual services ; ff. De operis lib., l. *opere*, and the last law but one ; ff. De pign. act., l. [*qui*] *vel universorum*. A reasonable allowance for moderate expenses, however, will be made by the lord. But if his status is such that he cannot and has not been accustomed to make such expeditions, then the answer is the contrary ; ff. De operis lib., l. *quod nisi*, last section ; ff. De arbit., l. *si cum dies*, § *si arbiter*. This subject is also treated in Speculum in Speculo, tit. De feudis, § *ipsum*.

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*Whether slaves are bound to follow their lord to war everywhere ?*

[Ch. xxxvii.]

My eighth question is whether slaves are bound to follow their lord to war everywhere. About them there is no doubt, since the lord has full power over them, provided he does not treat them with excessive cruelty ; ff. De his qui sunt sui vel alien. iuris, l. i and l. ii.

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*Whether freedmen, when summoned, are bound to follow their patron to war ?*

[Ch. xxxviii.]

My ninth question concerns freedmen. Solution : Freedmen are bound to render the usual services, and unusual services cannot be imposed on them ; ff. De operis lib., l. *quod nisi*, § *si vag.*<sup>(2)</sup> ; ff. De procur., l. *sed haec*, § ii.

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*Whether cultivators, when summoned, are bound to follow their lord to war ?*

[Ch. xxxix.]

My tenth question is whether cultivators are bound to go to war when summoned by their lords. Solution : Cultivators are divided into " ascripticii " and " censiti." Those who are bound to the soil by a written document are called " ascripticii," and two documents are concerned, one to constitute, the other to prove, their status. By the first they promise the lord of the soil never to depart from it ; by the other they confess themselves " ascripticii " ; and as to these documents see C. De agric. et censitis, l. *cum scimus*. And between these and slaves there is practically no difference ; C. same title, l. *ne diu*. And I say " practically," because they do differ in this, that a slave may be alienated either with his " peculium " or without ; l. *ne diu* ; an " ascripticius," only with the soil ; C. same title, l. ii. Also, " ascripticii " may be ordained, even without the consent of their lord, in the possessions to which they are " ascripti " ; Authent., De sanct. episc., § *ascripticios* ; but slaves may not. Also, " ascripticii " contract a marriage, with the knowledge and silence of their lord, without changing their condition ; C. De agricol. et censitis, last law ; but slaves who contract marriage, with the knowledge and silence of their lords, are freed from the servile condition ; Authent., De nupt., § *si vero*. From this it is as clear as day that the right which lords have over " ascripticii " is a right related to the possessions to which they are " ascripti." And so it appears that, if they are summoned by the lord to extraneous personal services, they are not bound to obey, except by special agreement to that effect. " Censiti," however, are those who are bound to render something certain annually ; C. Quib. caus. coloni, l. ii. They also differ from " ascripticii " in this, that " ascripticii " are bound to render something uncertain, for instance, a third or a fourth of the fruits, whereas " censiti " are bound to render a thing certain ; and our conclusion in their case is as above. We may infer from this that neither " coloni " nor " inquilini " can be compelled.

*Whether a lord may summon those who are allied with him  
to help him in war ?*

[Ch. xl.]

My eleventh question is whether a lord may summon those who are allied and leagued with him to war, so that they will be bound to help him. Solution : Allies are fully free, although they are bound to certain things by agreement ; ff. De captivis, l. *non dubito*. In these cases, however, the agreement and the mode of agreement must be considered and observed to the letter ; ff. Depositi, l. i, § *si convenitur* ; and De pactis, l. i.



*Whether those who are subjects by reason of jurisdiction only  
are bound to participate in war ?*

[Ch. xli.]

My twelfth question concerns those who are subjects by reason of jurisdiction only, and are not vassals. Solution: They are bound to participate, nor will they have an action to recover their losses, because they act under an obligation. There is an exception to this rule in the case of certain persons who are excused from personal services, of whom some are excused on the ground of age, as minors and old people ; C. Qui ætate, in red and black ; some by infirmity ; C. Qui morbo, throughout ; some by the number of their children ; C. Qui numero liber., throughout ; some because of their profession ; C. De profess. et medic. ; some by their sex, as women, and so on. Otherwise the rule stands.

*Of persons not bound, who voluntarily participate in a war.*

[Ch. xlii.]

What I have said relates to persons who are in some sort bound. It remains to consider persons fully free who are summoned to war. In this inquiry we must observe that we confine ourselves to persons who go to war from no necessity or obligation, for those who go under obligation have been treated above. Some go out of mere generosity ; some because they are bound to return a service ; some to seek and win glory in war ; some because they let out their services as mercenaries, if this can be called a contract of letting ; some go simply in the hope of booty, like the so-called " saccomanni," persons who seize " manu," with the hand, and carry off in a sack ; and these persons we must consider. And first let us take the first class, those who go absolutely voluntarily.

*Whether those who voluntarily participate place him in whose service they go  
under an obligation to themselves, &c. ?*

And my first question is, whether those who voluntarily participate in a war place him in whose service they go under an obligation to themselves, if they incur loss ; as, for instance, if they lose their arms in the war, or horses, or are taken prisoners, even in going to or returning from the war. Solution : Here we must observe that voluntary participators are sometimes first summoned and asked by their lords ; sometimes they join on their own motion, without being so summoned. If they are summoned to go by a lord, then they have an " actio mandati " against him, if, as I said above, they happen to lose something, unless it appears that they are acting from a sense of duty, or humanity, or relationship ; xxiii, q. iii, *non in inferenda* ; xi, q. iii, *si dominus*, and ch. *Iulianus*. If you object, and say that the lord is not bound, because such loss is caused by accident, for which no one is liable, *De homici., Iohannes* ;

C. De pign. act., l. *quæ fortuitis*, the answer is that it is an accident which might have been and ought to have been foreseen, because such events are probable in wars, because the issue of war is doubtful ; and so Innocent notes in De iureiurando, ch. *sicut*.

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*Whether a borrower is liable to the lender to replace horses and arms lost in war ?*

[Ch. xliii.]

My second question is, What if a man lends another arms and horses to go to war, and they are lost ; is the borrower liable to the lender ? And it seems that he is, by analogy with the last argument, since this, too, might have been foreseen, as above. Solution : In this case he is not liable, according to Innocent ; and the reason of the difference is that in this case the borrower did not exceed the terms of the contract, because he only put them to the use for which the contract was entered into, and so he is not liable ; ff. Commod., l. *si ut certo*, § *sed interdum*. But in "mandatum," although a man might have known beforehand that he might probably lose them, yet he knew that an "actio mandati" would lie, because that follows from the nature of the contract. And this is always the rule, unless it is excluded by a special agreement.

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*Whether a hirer is liable to a letter to replace horses and arms lost in war ?*

[Ch. xliv.]

My third question is, What of one who lets out horses and arms ? if they are lost in war, will the letter have an action against the hirer ? Solution : Apply what I said of the lender ; the letter will have no action, because the hirer hired them for this purpose, and he has not exceeded the terms of the contract ; ff. Locat. et conduct., l. *si quis domum*.

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*Whether, if one man summons another to a war, and the other is robbed on his way to the war, the summoner can sue the robber by the  
"actio vi bonorum raptorum" ?*

[Ch. xlv.]

My fourth question is, What if a man who has been summoned to a war is robbed of his arms, horses, and other things on his way to give assistance ? I have said that the "mandator" is liable to the "mandatarius," but has the "mandator" an action "vi bonorum raptorum," or an action of theft, against the robber ? It appears that he has, because his interests are affected by the robbery, inasmuch as he is liable to the "mandatarius" in an "actio



mandati." Solution: These actions are not competent to him against the robber. And the reason is that the "actio vi bonorum raptorum" is only competent to the person upon whose goods the robbery was committed; ff. Vi bon. rapt., l. ii, § *hac actione*. For the "actio vi bonorum raptorum," or the action of theft, is only competent to one who had ownership, or possession, or detention, or some right in the thing, as has one to whom the thing was pledged and not yet delivered; ff. De præscript. verb., l. *si gratuitam*, § *si quis*; ff. De furt., l. *si is qui rem*, and l. *is cui*. The persons robbed, therefore, have these actions, but they will be able to sue the "mandator" by an "actio mandati," and the "mandator," when he has paid, will be able to call for a cession of the actions against the robber, and then, after the cession, he may sue, as a "procurator in rem suam"; C. Mand., the last law but one, and the last law. This is also the view of Innocent in the chapter above cited, De iureiurando, *sicut*.

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*Whether those who are not summoned to a war, but go of their own motion, place him in whose service they go under an obligation to themselves?*

[Ch. xlv.]

My fifth question regards those who go without being summoned, and of their own motion. Solution: If they go with the intention of making a gift of their services, for example, from a sense of duty, or humanity, or relationship, the case is clear. Such persons will not have an action; xxiii, q. iii, *non in inferenda*; xi, q. iii, *si dominus*, and ch. *Iulianus*. But if they go with the intention of putting the person in whose affairs they engage under an obligation, then they will have the "actio negotiorum gestorum"; and it is enough if the enterprise has been effectively begun; ff. De neg. gest., l. *sed an ultro*.

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*Whether those who are not summoned to a war, but go of their own motion and make an effective start, place the person in whose service they go under an obligation to themselves, even though he may object to and forbid their going?*

[Ch. xlvii.]

My sixth question is, What if persons go to a war of their own motion, but after being expressly forbidden by those to whose assistance they go? Will such persons have an action, if they effectively begin the service, and if they complete it successfully, to carry the question further? It appears that they will, on the analogy of one who drags an unwilling person out of a falling house; xxiii, q. iv, *ipsa pietas*. Also, a benefit may be conferred on a man against his will; dist. xlv, *et qui emendat*. Also, to forbid a man to help one seems to show that the other was mad; ff. De condi. instit., l. *quidam*; De Pœnitentia, dist. iii, *adhuc instant*; so the gloss holds of the doctor who treats a person against his will. This is noted in dist. lxxxiii, in the summary. I

believe the contrary in the present case, because of C. De neg. gest., the last law ; but I do not on that account reject the gloss ; I believe that it is true of the sick man and the doctor, because a sick man is presumed to be mad, if he does not wish to be absolutely cured. But a man who forbids another to come to a war for his assistance, is not presumed to be mad, for it is possible that he does not trust him, and suspects that he may betray him. Nor do I believe that the gloss would apply to a case in which a sick man was anxious to be well healed, but did not wish for that doctor, but for another ; then, in my opinion, the gloss would not apply, nor do the passages cited above prove that it would.

So much for those who participate voluntarily.

*Of those who participate because they are bound to return a service. Whether such persons may have an action against the person whom they help ?*

[Ch. xlviii.]

It remains to consider those who go because they are bound to return a service, for instance, because they have received the like or other assistance from the person whom they help. Will such a person have an action to recover his losses as above, against the person whom he helps ? Solution : If he goes in the way our case supposes, he goes with the idea of discharging a " natural " obligation, which, however, cannot be transformed into a " civil " obligation, nor used as an " exceptio " in a trial ; ff. De petit. hæred., l. *sed si lege*, § *consuluit* ; De testamentis, *cum in officiis*. And so we infer that he does not go with the intention of imposing an obligation, since the same act uniformly undertaken cannot bear contrary effects ; ff. De verbor. obligat., l. *si quis* ; ff. De conduct. indebiti, l. *cum pars*, § *si heres*, and l. *cum heres*. And if you say that there is no need to discharge this obligation, because no obligation upon which either an action or an " exception " could be founded was ever created, and that which does not exist cannot be discharged, ff. De iniusto, rupto, irrito facto testam., l. *nam*, and De dispensatione impuberum, ch. *ad dissolvendum*, the solution is this : Although no obligation upon which an action or an " exception " could be founded was created, yet, as I said above, there was created a " natural " obligation capable of being discharged by a return of service ; see the laws just cited ; and this intention of discharging prevents the creation of an obligation, since intention is required in obligation ; ff. De oblig. et act. ; l. *obligationum* ; and same title, l. *non figura*.

*Of those who participate for the sake of winning glory.*

[Ch. xlix.]

It remains to consider those who participate for the sake of winning glory in war.



*Whether such persons place the person to whose assistance they go under an obligation to themselves ?*

Do such persons place the person to whose succour they go under an obligation to themselves? Solution: If this is their sole object in going, they do not; for the lord would be liable either in an "actio mandati" or an "actio negotiorum gestorum." He cannot be liable in an "actio mandati," since no mandate was given in the circumstances supposed by our question, and an "actio mandati" does not lie without a preceding mandate; for although some say that an "actio mandati" lies for negligence or deliberate wrongful act, when a mandate has once been undertaken, yet the preceding mandate is always required; ff. Mandati, l. i. Or if you say that the "actio mandati" requires a preceding contract, that is more correct, as I show elsewhere in dealing with the "innominate" contracts; C. De rerum permutatione, l. *ex placito*. Again, he cannot be liable in an "actio negotiorum gestorum," because the other did not come with the intention of engaging in his affairs, but rather for his own purposes, although, as a necessary consequence, he does engage in them; and so the "actio negotiorum gestorum" will not lie either.

*Of those who participate because they let out their services.*

[Ch. l.]

It remains to consider those who let out their services, or, more accurately, those who are voluntarily enlisted at an agreed salary.

*Whether such persons have an action against their hirers ?*

Have the letters an action against the hirers? Solution: Such persons make a contract of "locatio operarum et rei"; and therefore, if the hirer uses them only for the purpose for which they are hired, he is not liable; ff. Locati et conducti, l. *si quis domum*; and this is so, unless there is a special term in the contract, or a custom to the contrary, as there is in Italy, namely that compensation should be given for horses lost in the service of the hirer; otherwise the rule stands, as above.

*Of those who participate with the intention of getting booty. Whether an action is competent to such persons ?*

[Ch. li.]

It remains also to consider those who go with the intention of plundering; and as to them, there is no doubt that no action is competent to them, since no obligation arises from a dishonourable transaction; ff. De verbor. obligation., l. *veluti*, and l. *generaliter*, and l.\* *si ex plagis*.

\* Supply Ad legem Aquiliam.

*Whether clerks may participate in war ?*

[Ch. lii.]

Further, we must see whether clerks may participate in wars. This question was determined by Gratian, xxiii, q. viii, *convenior*; as the gloss there recites in the summary. There have been various opinions on it. For some say that clerks may use arms of defence, but not of offence, and so may make a defensive war. Others say that they may use all kinds of arms, provided that they attack at once, and only in defence of themselves, and not of others, and when they are placed in a position of imperative necessity; De homicidio, ch. ii; xxiii, q. viii, *convenior*; and the same cause, q. i, at the beginning. But if they can escape by other means, then they may not; De homicidio, ch. *suscepimus*. Others say that they may only do so with the authority of the Pope. Gandulphus holds that they may not make war in person, but may do so vicariously. Gratian seems to be of the same opinion; xxiii, q. i, § *in registro*.

We may conclude this question by saying that clerks summoned by the Pope may participate; for the prince has authority to make war; xxiii, q. i, *quid culpatur*; same cause, q. ii, ch. i, and q. iii, ch. *Maximianus*. But in a war they may not kill even a pagan, because of the fear of "irregularity," though they may encourage others to fight, and may even hurl stones and other missiles provided that none are killed by their shots. This is noted by Innocent, De restit. spol., *olim*; and Ne cler. vel monachi, ch. *sententiam*. If summoned by others, especially by secular princes, they ought not to go to war. But for their own defence, when they cannot escape by other means, they may even kill, even without fear of "irregularity"; Clem., De homicidio, *si furiosus*. And I say defence of their own person advisedly; it is otherwise if they are defending another, even on the instant, such as a father, a brother, and the like. The note of Innocent in De sent. excom., ch. *si vero*, i, where he holds that one who strikes a clerk in this case is not excommunicated, is not in conflict with this. For "irregularity" is contracted even without fault, as where a judge puts a person to death lawfully; dist. li, ch. i; and note on De sponsalibus, ch. *inter opera*. But excommunication is not incurred without fault; indeed it must be preceded by some persuasion of the devil; xvii, q. iv, *si quis suadente*; so Clement notes in the chapter quoted, *si furiosus*.

But can a clerk be blamed who does not flee, but waits for one who is attacking and kills him in self-defence? It seems that he must be, by the text of Clement, where he says "who could not avoid death by other means"; this is proved by ff. Ad leg. Aquil., l. *scientiam*, § *qui cum aliter*, whence the passage in Clement was taken. And this is following the example of our Saviour, who fled into Egypt; xxiii, q. iii, § i. And this is noted by Bernard in De homicidio, ch. *suscepimus*.

I believe the contrary to be true on the authority of ff. Ex quibus causis maiores, l. *in eadem*; for there these two things, not to be able to withdraw, and not to be able to withdraw without dishonour, are treated as the same.



I am confirmed by the consideration that danger might occur in flight, for instance, if he were to fall, as often happens in flight, and therefore he ought not to expose himself to such a danger ; Vt lite non contestata, *accedens*, ii. But in this I think we must weigh all the circumstances, the danger of flight, the quality of the person fleeing, and of the person attacking, so that, if by flight a man would probably incur a danger of death, then he is not to be blamed ; otherwise he is.

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*Whether mercenaries enlisted in Germany, at a fixed salary by one who hires them, will have an action against one who, while they are on the way, &c. ?*

[Ch. liii.]

Suppose mercenaries have been enlisted, at a fixed salary, with an engagement for six months, to come from Germany to serve an Italian, and, while they are coming, the Italian loses his status absolutely ; can the mercenaries bring an action for their salary ?

*Whether mercenaries enlisted in Germany by an Italian city, at a fixed salary yearly, if the city is seized by a tyrant, while they are on the way, may bring an action for their whole salary, &c.*

Suppose mercenaries have been enlisted in Germany by an Italian city, at a fixed salary, with an engagement for a year, and while they are on the way, the city is forcibly seized by a tyrant ; can the mercenaries bring an action for the whole salary, or for a rateable part, or for what ? The following texts seem to prove that they can claim the whole : C. De annonis, l. i ; C. De agent. in rebus, l. *matriculam* ; C. De prox. sacr. scrinior., l. *si quis in sacris* ; C. De primipilo, l. i ; ff. De legat., l. *legatum* ; ff. De var. et extra. cognitionibus, l. i, § *divus*.

On the contrary, the following texts seem to show that they can only claim a rateable part : C. De erog. milit. annon., l. *his scholaribus*, and the last law but one, at the end ; C. De advoc. divers. iudiciorum, l. *post duos*.

Solution : In this case the debt does not arise from a pure contract, but rather from a disposition of a law, because the men are appointed to an office, and the salary is given by the disposition of a municipal law. Hence it is not merely a contract of " *locatio conductio*." And in such cases we must observe that persons are sometimes appointed to an office which requires labour, where the salary is given primarily for the labour ; and this is the case with mercenaries. Sometimes they are appointed to an office where the salary is given not for the labour only, but because high intellect and knowledge are required, as in magistracies and the like. Sometimes they are appointed to an office, and the salary is given for both ; that is to say, both for the labour, and for high intellect, and knowledge, as in the case of ambassadors.

In the first case, it is given rateably according to the time of service rendered ; C. De erog. milit. annonæ, last law but one. In the second case, if a single act was done in performance, then the whole is due ; see the laws quoted above to the contrary. But if there was no performance at all, he ought to have the salary for the year in which he entered on the office ; C. De advoc. divers. iudiciorum, l. *post duos*.

In the third case, what is given as remuneration for labour and skill is sometimes indivisible, as in the case of advocates, doctors, and ambassadors ; and then the whole is given as above. Sometimes it is divisible, as in the case of the constable of the standard ; for there the man is chosen on both grounds, for his skill and for his labour, and these admit of division ; so that mercenaries will receive a rateable part, whereas skilled persons, chosen by reason of their skill, have the whole, the distinction being as above.

I may add a fourth case, where a man is chosen primarily for rank, as the attendant of a prince. Then he has the whole ; C. De prox. sacr. scri., l. *si quis in sacris* ; C. De agent. in rebus, l. *matriculam* ; De principibus, l. i. And the salary passes to his heirs ; C. book xii, De domesti. et protect., last law. This solves the question of Count Landi, captain of a company of brigands, who was several times engaged as a mercenary by Italian lords, with an engagement for a fixed time and at a fixed salary.

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*Whether mercenaries ought to be paid at the beginning or at  
the end of a month ?*

[Ch. liv.]

A further question is, When ought mercenaries to be paid, at the beginning or at the end of a month ? There are some glosses dealing with an advocate who also acts as a soldier, which seem to show that it is due at the beginning ; C. De advoc. divers. iudicio, l. *advocati*. This is supported by ff. De extraordin. cognitionibus, l. i, § *divus* ; C. De iudiciis, l. *properandum*, § *in honorariis* ; and ff. Locat. et conducti, l. *qui operas*, § i. C. book xii, De principibus, l. i, is to the contrary. Solution : Sometimes money is given rather for expenses than as the pay for labour, and then it is due at the beginning. Take as an illustration the case of ambassadors ; ff. De legationibus, l. *legatum* ; ff. Mand., l. *si vero non remunerandi*, § *si mandavero* ; C. book x, De legationibus, l. ii. Sometimes money is due as pay for labour, and then we must consider the intention of the parties, express or implied ; for if there was an implied intention to that effect, then it seems that it is due at the beginning. For instance, if a man cannot perform his promised services unless money is given him, then it appears to have been impliedly agreed that it should be due at the beginning, for in such cases we always look for what is the more probable ; ff. De regul. iur., l. *semper in stipulationibus*. But if this probability does not appear, then the rule is, that in obligations arising out of contract the salary is due at



the end of the time ; C. Locat. et conduct., l. *eadem* ; and ff. De stip. servorum, l. *si servus communis Mævii*, last section. But if the money is due by disposition of law to persons appointed to office (as to whom see above), as it is in the present case, then, if there is one single salary, it should be paid at the beginning ; ff. De var. et extraor. cognitionibus, l. i, § *divus*. And if the glosses to this effect are noticed, the salary may be either annual or monthly, as it is in the case of the mercenaries of whom we are speaking, who have seven florins a month, and then it is due at the beginning ; C. De advoc. diver. iudic., l. *post duos* ; and C. book xii, De principibus, l. i. I think, however, that mercenaries cannot retain it except rateably for the time for which they serve, as I showed above ; and they are bound to restore the residue, even when the impediment is caused by an extrinsic event.

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*Whether mercenaries who absent themselves for a time, even with the licence of their lord, lose their salary for that time ?*

[Ch. lv.]

Suppose that mercenaries during the time of their service withdraw for a time ; will they lose their pay for that time ? And suppose that they do so with the licence of their lord ? Solution : We must observe that services are sometimes defined with respect to a time that is not specified. Take the case of advocates of a church, who have a fixed salary to cover any cause which may affect the church during the year ; in that case there is no doubt that there is a single obligation, because there is a single duty imposed, although there may be several acts of performance. Therefore the whole sum is due ; see the passages cited above ; ff. De extraor. cognitionibus, l. i, § *divus*. Sometimes services are defined with respect to a specified and fixed time, as in the case of a learned doctor employed to read a certain book in a certain time. And then either the whole salary is promised at once, although payment may be distributed over the period ; and even then there is a single obligation, as above ; ff. De rebus creditis, l. *lecta*. Or sometimes payment is made by the year or by the month, and then there are as many obligations as there are months ; l. *post duos* ; and payment cannot be claimed for the whole time, but the instalments become payable severally for each month of service.

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*Whether mercenaries, who wilfully refuse to serve the whole time of their engagement, lose their pay for the whole time, or only for that which they have not served ?*

[Ch. lvi.]

Suppose they wilfully refuse to serve the whole time, will they lose their salary for the whole time, so that they will have nothing even for the time which they have served, or should they only lose it for the time they do not serve ?

Solution : There are some offices to which a man is appointed, which are so indivisible that if one thing is left undone, the rest is of no avail, and in such cases the whole salary is lost. Take the example of ambassadors, C. De legationibus, l. ii. There are other offices which are divisible to the extent that, if one thing is left undone, the rest is of value. Take the example of a mercenary. He need not return the whole, but only the part attributable to the future ; yet he is liable for any damage caused by his refusal to serve in the future, so that if no damage is caused, he pays nothing ; ff. Locat. et conduct., l. si fundus, § verisimilis ; and notes on ff. De annu. legatis, l. Mævia.

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*Whether a mercenary may serve by a substitute?*

[Ch. lvii.]

What if he wishes to serve by a substitute ? It appears that he cannot, because he was enlisted for his personal skill ; ff. De solut., l. inter artifices ; C. De caduc. tollend., the single law ; and Sext, De offic. delegat., the last chapter, and ch. is cui. On the other hand, any one can do by another what he can do by himself ; rule *potest quis*, and similar passages. Solution : The mode of appointment should be considered ; for sometimes a lord or a city appoints a constable, and gives him a standard and pay, and the constable has to enlist for himself those whom he will have to serve under the standard ; in this case no question runs between the city and the mercenaries, because the city enlists nothing except the skill and labour of the constable, yet the mercenaries are themselves bound. Sometimes a city enlists mercenaries for itself and places them under the several standards, and then it chooses a constable for his skill and services. In respect of skill, a man could not give a substitute, as appears by the laws just cited. The mercenaries are chosen only for their services and labour ; and persons who are chosen for services, and not for skill, may appoint a substitute, as Innocent notes in De re iudicata, ch. cum Bertholdus. Hostiensis has an opinion to the contrary in that passage. I think Innocent is right, having regard to the laws just cited and their true intent. But it is safer to do it with the lord's consent, so that both opinions may be respected.

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*Whether a mercenary loses pay during the time when he is ill ?*

[Ch. lviii.]

What if a mercenary is ill ? Solution : He is deemed to be serving, so that his salary is due ; ff. De statuliberis, l. si heres, § Stichus<sup>(7)</sup>.

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*Of spoils and captures in war. Whether one who makes a capture in war becomes owner of the person or thing captured, and whether the doctrine of "postliminium" applies?*

[Ch. lix.]

Fifthly, it remains to consider spoils and captures made in war.

And in the first place I ask whether one who captures anything in war becomes owner of the person or thing, and whether the doctrine of "postliminium" applies. Solution: In a public war, made by the authority of a prince, which I have discussed above, this is so. For the captor becomes owner; the persons captured become slaves; ff. De captivis, l. *hostes*; and ff. De verb. significatione, l. *hostes*. But if the war does not proceed from the edict of a prince, although it may be otherwise lawful, as when it is in defence of one's own property, then, if he who declares war has jurisdiction over him on whose account he declares it, he may decree that any one capturing anything in the war shall become owner of things captured, and shall detain persons until he can present them to his superior. So Innocent holds in De iureiurando, ch. *sicut*, referring on this subject to the note on De sent. excommunicationis, ch. *a nobis*. Innocent adds that even without making any decree, he may condemn him for invading the bounds of his jurisdiction; Authent., *qua in provincia*, C. Vbi de crim. agi oporteat. He adds that if the person declaring war has no jurisdiction, but is merely defending himself and his property, then he may not capture and detain the assailant, because he is only allowed to defend himself, and that only within the limits of justifiable defence; C. Vnde vi, l. i; De restit. spoliatorum, *olim*. He adds that if he attacks the property of his assailant, the assailant cannot succeed in an "actio vi bonorum raptorum" nor in an "actio iniuriarum," because he may be met with an "exceptio paris criminis," setting up a like offence on his own part. All this, as I said, is noted by Innocent in De iureiurando, ch. *sicut*. I think Innocent's first statement is true without qualification, because a lord may punish an offence by a decree depriving a man of the ownership of his property and transferring it to another. But I think the second statement requires qualification. I think, rather, that if a state which recognizes no superior in fact, and so is an enemy of the Roman people, declares war on another, which also recognizes no superior, no decree is required, any more than in a war declared by edict of the prince; for this rule comes from the law of nations, which is derived from ancient customs, except that the part which concerns persons no longer holds, because in modern times persons captured in wars of that kind do not become slaves and are not sold, and the doctrine of "postliminium" does not apply in such cases to-day. On reading his third statement, I have sometimes been led to disapprove of that decretal for the following reason: One who has been despoiled is entitled, above all things, to restitution, and the "exceptio criminis" cannot be set up against him; De restit. spoliatorum, ch. *in literis*, and ch. *item cum quis*. The person first despoiled, therefore, will not be able to set up the "exceptio

criminis," nor any other even more stringent "exceptio." Now, as I write, I think that Innocent's gloss may be saved in two ways. First, because Innocent does not speak of a case in which the person last despoiled brings the interdict "unde vi"; he speaks, rather, of a case where he brings the "actio vi bonorum raptorum" or the "actio iniuriarum," which are obviously very different. Or, secondly, we may say that Innocent does not mean that an "exceptio criminis" in the strict sense is set up, but an "exceptio" alleging the other's act of spoliation, which is allowed even against one who brings a "recuperative" interdict, so that he may be defeated by an "exceptio spoliationis," as the text in *De ordine cognitionum*, ch. *super spoliatione*, proves.

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*Whether persons captured in a war between two states become slaves, and whether ownership is acquired over them?*

[Ch. lx.]

When one state makes war against another, can men be called "enemies," in the sense that if captured they will become slaves, and ownership over them be acquired? It appears not; ff. *De captivis*, l. *si quis ingenuam*, at the end. On the contrary, a state of itself makes a people, and so it appears that they are "enemies," just as are the Christian and the Saracen peoples. Solution: When the dispute is between two states which are under the same lord, the rules of captivity and "postliminium" do not apply; ff. *De captivis*, l. *si quis ingenuam*. But when it is between two states that do not recognize a superior—and I assume, to remove all doubt, that one is an enemy of the Empire, as being rebellious—then, by the law of nations, which is derived from ancient customs, the rules of captivity and "postliminium" apply, except that, according to the customs of modern times, and the practices observed among Christians from an early age, "postliminium" does not apply to persons, and persons are not sold, and do not become slaves.

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*Whether things captured in war become the property of the captors?*

[Ch. lxi.]

Do things captured in war become the property of the captors? It seems that they do, by ff. *De captivis*, l. *si quid in bello*. The contrary seems to be proved by the same title, l. *si captivus*. Solution: The law *si quid in bello* speaks of movable things; the law opposed to it of immovables. But it is objected that movables become public property; xxiii, q. v, ch. *dicat*. Solution: I say that they become the property of the captor; but he is bound to assign them to the general of the war, who will distribute them according to deserts. And this rule applies wherever the doctrine of "postliminium" does not apply; ff. *De captivis*, l. ii.



*Whether trickery is allowed in wars?*

[Ch. lxii.]

A further question is whether one may use trickery to win victory in wars. It seems that one may ; for Augustine says, in the book of *Quæstiones*, " when a lawful war is undertaken, justice has no concern with the question whether one fights in the open or by trickery." This is supported by Joshua, ch. viii. To the contrary seems to be what is written in Deuteronomy, ch. xvi, " that which is just shalt thou follow justly." But to follow a thing by trickery is to follow it unjustly, since it savours of deceit, and such practices are restrained by the " *actio de dolo* " ; ff. *De dolo* ; C. same title, throughout. Moreover, trickery is opposed to happiness, and it breaks the faith, which should be kept even with an enemy ; see Augustine to Boniface, quoted in xxiii, q. i, ch. *noli* ; xxxiii, q. v, *quod Deo pari consensu*. Moreover, it is written in Matthew, ch. vii, " whatsoever ye would that men should do to you, do ye even so to them," and in the beginning of the *Decretum*. And this rule must be observed towards all our neighbours. Since, therefore, no one would wish trickery to be used to himself, it follows that he ought not to use it to others. Solution : We must observe here that the word " trickery " properly means anything which tends to deceive another ; but there are two ways in which a person may be deceived by the word or act of another. One way is if a false statement is made in order that another may be deceived, or in order that some promise may not be observed, and such a use of trickery is always unlawful ; for between enemies there are certain bonds which must be observed, as Ambrose says in the book *De Officiis*. In the other way, a man may be deceived by our words or acts merely because we do not disclose to him our intentions or our secrets. This mode of deceit is lawful ; for not even the secrets of Holy Scripture are at all times to be disclosed, lest men scoff at them, according to the passage in Matthew, ch. [x]vii, " Give not that which is holy unto the dogs." Moreover, it is a special instruction among military documents, that secrets are not to be revealed to enemies, and so, too, the Blessed Thomas lays down in the Second book of the Second part, question xl ; and the gloss on xxiii, q. ii, ch. *dominus*, says without qualification that we may use this kind of deceit, provided we do not break faith ; same cause, q. i, ch. *noli*. The gloss on xxii, q. ii, ch. *utilem*, is to the same effect ; it quotes dist. xliii, can. *in mandatis* ; ff. *De capt.*, l. *nihil interest* ; C. *De commerc.*, l. ii ; xiv, q. v, *dixit* ; *De consecra.*, dist. ii, *dixit dominus*.

*Whether it is lawful to make war on feast days?*

[Ch. lxiii.]

The next question is whether one may make war on feast days. And it seems that one may not, for feast days were introduced in order that one might have leisure for divine things ; *De consecra.*, dist. ii, § *pronuntiandum* ;

De feriis, last chapter ; C. same title, l. *dies*, and the last law ; and this is supported by Exodus, ch. xx. Moreover, in Isaiah, ch. lviii, those who claim debts on days of fasting, and engage in quarrels, smiting with their fists, are reproved. Much more, then, should those who make war on feast days be reproved. Further, no irregularity may be committed in order to avoid a temporal inconvenience. Therefore, &c. Moreover, the text of De treug. et pace, ch. i, seems to confirm this view.

On the contrary side, we read in 1 Maccabees, ch. ii, " they took counsel laudably saying, Whosoever shall come against us to battle on the sabbath day, let us fight against him." Solution : The Blessed Thomas, in the Second book of the Second part, question xl, holds that one may make war on feast days in case of urgent necessity, but on the necessity ceasing, one must cease from the war ; and he supports this by the passage in John, ch. vii, " are ye angry at me, because I have made a man every whit whole on the sabbath day ? " And so he argues that doctors may heal for the sake of a man's private health, but the public advantage is an object of much greater importance. Goffredus and Hostiensis, in De treug. et pace, ch. i, say that on Thursday we should not make war, because on that day the Lord ascended into Heaven, and made the supper with the Disciples ; De consecra., dist. i, *porro* ; and De consecra., dist. ii, *literis* ; nor on Friday, out of reverence for the Passion of the Lord ; nor on Saturday, because the Disciples on that day hid for fear of the Jews, and because the body of the Lord lay in the sepulchre : De consecra., dist. iii, *Sabbato* ; nor on Sunday, because the Lord did almost all His notable acts on that day ; dist. lxxv, *quod die* ; and out of reverence for the Resurrection. I believe that the urgency of the necessity must be considered, as mentioned above. The text of Pope Nicholas is in xxiii, q. viii, ch. *si nulla*.

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*Whether one who has recovered in a war the whole of his  
loss, may still, &c. ?*

[Ch. lxiv.]

The next question is, What if a man has recovered in a war the whole of his loss ; may he still bring an action against his adversary, or may he still declare war against him ? It seems that he may bring an action ; for what is captured in war is the penalty of contumacy, and so it would seem that he may bring an action none the less ; ff. De tab. exhib., l. *locum*, the penultimate section. Also, the thing was not paid in satisfaction of a debt, but the ownership of it was obtained by war ; xxiii, q. v, *dicat* ; and q. vii, *si de rebus* ; ff. De acquir. rer. dom., l. *naturaliter*. Also because, against one who is contumacious, an oath may be taken an unlimited number of times ; ff. De rei vind., l. *qui restituere*. The gloss on xxiii, q. ii, ch. *dominus*, holds the contrary, on the authority of ff. De reg. iuris, rule *bona fides*.

I do not think that the gloss is true without qualification, but a distinction should be drawn according as the loss was recovered from the same person



or from others. If from the same, the opinion of Johannes holds; if from others, or . . . , and then the rule is the same; C. De evict., l. *emptori*; or he might have a right of recourse against the first; C. De usur. rei iudic., l. ii, the last section. But otherwise it is allowable for the same debt to be paid several times over; ff. De tab. exhib., l. iii, § *condemnatio*; and Instit., De legat., § *si res*. So the gloss notes on ff. De reg. iur., rule *bona fides*; and so, too, notes Io. Faventinus<sup>70</sup> on the ch. *dominus*, already quoted.

*Whether those who die in war are saved?*

[Ch. lxxv.]

Are those who die in war saved? Solution: Those who die in a war for the defence of the Church obtain the heavenly kingdom. Two texts in particular prove this, xxiii, q. viii, ch. *omni*, which was addressed by Pope Leo to the King of the Franks; and xxiii, q. v, ch. *omnium*, which was addressed by Nicholas to the army of the Franks. But those who fall in other lawful wars are also saved, provided they die without mortal sin; but if they fall in an unlawful war, though that be their only mortal sin, they perish; De Poen., dist. v, *fratres*.

*Whether it is lawful to wage corporeal war on behalf of the property and possessions of the Church, &c.?*

[Ch. lxxvi.]

Is it lawful to defend the possessions of the Church by corporeal war, and for this purpose to assemble troops? Obviously it is. It is proved by the texts xxiii, q. iii, ch. *Maximianus*; xv, q. vi, *auctoritatem*; dist. lxxiii, *Adrianus*; xxiii, q. viii, ch. *igitur*, and ch. *hortatu*; and the gloss *magistra* on xv, q. vi, ch. *auctoritatem*. Also by the text of Sext, De sent. excom., ch. *dilecto*.

*Whether bishops may go to war without the licence of the Pope?*

[Ch. lxxvii.]

May bishops go to war without the licence of the Pope? Some say they may not, without any qualification, on the authority of canons which appear to lay this down expressly; xxiii, q. viii, *quo ausu*, and ch. *si vobis*, and ch. *si quis episcopus*. Though those chapters admit of various meanings, yet I think this is true, if they are summoned, or if they join of their own accord in the wars of others, particularly secular wars; otherwise, if they are defending their own rights.

*Whether prelates, for the temporalities which they hold from the Emperor, &c.?*

[Ch. lxviii.]

Are prelates bound to pay tribute for the temporalities which they hold from the Emperor for wars declared by him? We must say that they are, as is proved by xxiii, q. viii, § *ecce*, with the two following sections, down to § *quamvis*.

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*Whether mercy should be shown to persons captured in a lawful war?*

[Ch. lxix.]

Should mercy be shown to persons captured in a lawful war? We must say that it should, unless by sparing them there is fear of a disturbance of the peace. This is proved by xxiii, q. i, ch. *noli*, at the end; and on the authority of that chapter, as understood by Hugolinus, Conradine was beheaded.

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*Whether the Church should declare war against the Jews?*

[Ch. lxx.]

Should the Church declare war against the Jews? We must say not, since everywhere they are prepared to serve, and do not persecute, Christians. Otherwise of the Saracens, who do persecute Christians. This is the text, xxiii, q. viii, *dispar*; and the gloss there notes that it would not be necessary to declare war even against the Saracens, if they did not persecute Christians.

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*Whether those who attend in a war, but who cannot fight, &c.?*

[Ch. lxxi.]

Should those who attend in a war, but who cannot fight, enjoy the immunities of combatants? Say that they should, provided that they are useful in counsel in other ways; see the note on De voto, ch. *ex multa*.

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*Whether prelates, by reason of temporal jurisdiction, may, &c.?*

[Ch. lxxii.]

May prelates declare wars, and take part in them, and encourage others to battle, by reason of their temporal jurisdiction? Say that they may, as Innocent notes in De pœnis, ch. *quod in dubiis*.

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*Whether a prelate, for the injury of a subject, may, &c.?*

[Ch. lxxiii.]

May a prelate declare war for an injury done to his subject, for which justice is not done, and capture in the war persons other than the wrong-doers? Say that he may, as Innocent notes in *De appellat.*, ch. *dilectis*; and *De iureiurando*, ch. *sicut*.

*Whether the Pope's delegate may declare war?*

[Ch. lxxiv.]

That is to say, may he invoke the secular arm? The question has been much discussed, and is treated in *De offic. deleg.*, ch. *significasti*, by Innocent.

*Whether wars declared by the Church against excommunicated persons are meritorious?*

[Ch. lxxv.]

Are wars which the Church declares against excommunicated persons meritorious? We must say that they are, and it is lawful for prelates and individuals to encourage others to fight in them. This is proved by the texts xxiii, q. v, *ad omnium*, and the following chapter; and q. viii, ch. *igitur*, down to § *ecce*; and q. iv, ch. *sicut excellentiam*.

*How many are the kinds of corporeal wars?*

[Ch. lxxvi.]

The next question is how many are the kinds of corporeal wars which are recognized in law. Solution: Seven kinds are recognized by law.

The first is called "Roman," and is that which the faithful wage against the infidels; and this is lawful; *De hæreticis, excommunicamus*, ii. And it is called Roman, because Rome is the head of the Faith; xxiv, q. i, *hæc est fides*, and ch. *quoniam*; *De summa Trin.*, the penultimate chapter. And in this sense may be understood ff. *De captivis*, l. *hostes*.

The second is that which is made on the authority of a lawful judge, having mere jurisdiction against the contumacious and rebellious; ff. *Quod met. causa*, l. *continet*; ff. *De iurisd. omn. iudic.*, l. iii, and l. iv; C. *Ne quis in sua causa*, the single law. And these are not strictly called enemies, for although that which we acquire from them becomes ours, yet the converse is not true; ff. *De captivis*, l. v, § *in pace*.

The third is called "presumptuous" war, and is that made by persons who disobey a judge; *De Pœn.*, dist. iii, § i, at the end; *De maiorit. et obed.*, ch. *si quis venerit*; ff. *De rei vind.*, l. *qui restituere*; ff. *Ne vis fiat ei qui in pos. missus*, l. iii; C. *De seditiosis*, l. i, at the end.

The fourth is the war which is lawful whenever it is allowed by authority of law. And it is lawful as regards the person to whom the authority is given ; xxiii, q. ii, ch. *si dominus* ; De sent. excom., *si vero*, i, § *nec ille* ; C. Quando lic. unicuique sine iudi. se vindicare, l. i, and l. ii ; and also his relations and neighbours ; Sext, De sent. excom., *dilecto*.

The fifth, which is unlawful, is war made against the authority of law, as where a man defends himself contrary to the authority of a judge and of the law ; De sent. excom., *perpendimus*, and ch. *contingit*, and ch. *in audientia*.

The sixth, or " voluntary " war, is that which the secular princes of our time make without the authority of the emperor. And this is unlawful, because without the authority of the emperor it is not even lawful to bear arms ; C. book xi, Vt armor. usus, in red and black ; Authent., coll. iii, De man. prin. ; Authent., coll. vi, De armis. Moreover, those who do so violate the *lex Iulia maiestatis* ; ff. Ad leg. Iul. maiest., l. iii.

The seventh, which is called " necessary " and lawful war, is war made by the faithful, when they defend themselves by the authority of the law against those who attack them ; for to repel force by force is lawful ; ff. De iustit. et iure, l. *ut vim*, and similar passages. On these subjects see Hostiensis, Sext, De homicidio, *pro humani* ; and the Archdeacon, xxiii, q. ii, ch. *iustum*.

From this we see what wars are lawful, and what are unlawful. For wars are said to be lawful by reason of the person declaring them, the person against whom they are declared, the thing, and the cause, and the law which allows them ; and they are unlawful in the converse cases. But generally there is one justifying cause, the contumacy of one who resists unlawfully. For when justice cannot be had from one who is liable, then war may be declared, for recourse is had to that instrument for help ; xxiii, q. i, *quid culpatur*, and ch. *noli* ; xxiii, q. viii, *si nulla* ; ff. De usuf., l. *si ususfructus*. And on this question of what wars are lawful, there are notes by Innocent, De resti. spol., *cum olim*, i ; by Hostiensis, in Summa, De treu. et pace, § *quid si iustum* ; by the Blessed Thomas, in the Second book of the Second part, question xl, the first, second, and third articles ; and by Ægidius, in the book De regimine principum, at the end.

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*Of particular war which is waged in self-defence ; being the Fourth Treatise of the Third Principal Part.*

[Ch. lxxvii.]

Universal corporeal war having been considered above, in the third preceding principal treatise, it now remains to consider, fourthly, particular war which is waged in self-defence ; and in treating it I shall proceed as follows : I shall first show what it is. Secondly, how many are its kinds. Thirdly, by what authority it was introduced. Fourthly, who may use it. Fifthly, against whom. Sixthly, on whose behalf. Seventhly, in what manner. Eighthly, what is its end.

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*What is particular war ?*

[Ch. lxxviii.]

As to the first question, what is the war declared "particularly" in self-defence, I say that it is "a contention arising on account of something alien presented to human desire, proceeding from the infliction of particular violence, and tending to its exclusion." This definition is supported in substance by the text of ff. De iustit. et iure, l. *ut vim* ; ff. Ad leg. Aquil., l. [qui] *scientiam*, § *qui cum aliter* ; C. Vnde vi, l. i ; ff. De vi, l. iii, § *si quis* ; and De resti. spol., ch. *olim*. I said "contention," for contention is taken as the genus, as it was in the definition of war undertaken generally, in the first treatise above, at the beginning. Secondly, I said "arising on account of something alien," &c. ; this supplies its differentia, for herein it differs from universal war, and other species of war. Thirdly, I said "tending to its exclusion." This is the final cause of the war itself.

*How many are the kinds of particular war ?*

[Ch. lxxix.]

As to the second question, which asks how many are its kinds, I say that they are two ; for I divide it into "lawful," and "unlawful," as I also divided universal war. But lawful particular war is of two kinds. For one kind is waged in defence of the true body, or what belongs to or concerns the true body. This I shall discuss in the present treatise. Another kind is waged in defence of a mystical body, or a part of it, meaning a community, which is called a body, and the individuals who compose it are called its limbs and parts ; ff. Quod cuiusunque univer., l. i ; ff. Ad municip., l. *quod maior* ; ff. De in ius vocand., l. *sed si hac*, § *qui manumittitur* ; De excess. prælat., l. *cum dilecta*, and the note on that passage. If, therefore, a community declares war in defence of one of its citizens, who is oppressed by a stranger, in default of justice being rendered by the judge of the oppressor, this is called "Particular War in defence of the mystical body, or a part of it" ; and this is called "Reprisals," as to which see Authent., Vt non fiant pignor., throughout ; Sext, De iniur., the single chapter, throughout. And this war will be discussed in the treatise next following. But lawful particular war, declared in defence of the true body, is a contention arising on account of something alien presented to human desire, proceeding from the infliction of particular violence by a private or public person, acting unlawfully outside his office, tending to its exclusion, within the limits of justifiable defence ; and this is supported by C. Vnde vi, l. i, with the note on that passage. But it is unlawful when the foregoing conditions, or any of them, are wanting, as will be shown in the following discussion.

*By what law was particular war introduced?*

[Ch. lxxx.]

As to the third question, which asks from what law this war proceeds, and what law makes it competent, the gloss on ff. De iustit. et iure, l. *ul vim*, on the word "iure," says, "by the law of the courts, not by the law of heaven." If the gloss means that this war proceeds from the law of the courts, I think that the gloss is not true. If it merely means that the law of the courts allows it to be declared, I think it is correct. But when the gloss says, "not by the law of heaven," I think it is false. I return to the particular points; and I say that war in self-defence proceeds from natural law, and not from positive law, civil or canon. And that this is true may be proved as follows: For the nature that produces a thing tends to its conservation, so long as the strength of the natural agent lasts, and strives to expel anything hostile to it; and if this is not so, the cause is a failure of the strength of the natural agent, and an excess of those acting against it. But this is not caused by intention of the natural agent, productive and conservative, but contrary to intention, since it always resists its opposites, so far as it can. This is obvious from experience, if we argue by natural instances. For it is obvious in the elements, which act and are acted upon in turn. For a thing acted upon resists the thing acting, and reacts upon it, solely to the end of its own conservation, and the destruction of the thing acting against it. And a material corporeal agent is always acted upon in acting itself, as the Philosopher says in the third book of the Physics, and the second of De generatione. This is obvious in inanimate things, such as plants, for their special nature tends to their own conservation and life, and to the expulsion of their opposites; and also in animals, and why not also in a rational creature? in whom, rather, the process is even more marked, because the creature himself is nobler, and other things are ordained to his service, as their end; ff. De usuris, l. *in pecudum*. Defence, therefore, proceeds from natural instinct. The text of Clem., De sententia et re iudicata, *pastoralis*, § *ceterum*, supports this. The text there speaks of defence which proceeds from natural law. This seems to be the meaning of the gloss on ff. Ad leg. Aquiliam, l. *scientiam*, § *qui cum aliter*. The gloss there says that the laws permit, in that they do not forbid. This is supported by the text of ff. Ad leg. Aquiliam, l. *itaque*. The text there says that natural reason allows one to defend oneself against danger. I conclude therefore, from this reasoning, that this war, limiting it to war declared in defence of one's person, proceeds from natural law and one's own instinct, but that positive law approves it, or does not forbid it, as the gloss on l. *scientiam*, § *qui cum aliter*, says. For some things which proceed from natural instinct are punished by positive laws, as in carnal intercourse; for intercourse, as such, proceeds from natural instinct, yet some unions are condemned by statute. And in this positive law limits and qualifies acts which proceed from natural law. So in other instances of acts proceeding from nature; for one naturally desires food and drink, and



yet the canon law limits this desire. For it forbids certain foods at certain times. It is true that positive law also qualifies the mode of defence, as appears in C. Vnde vi, l. i, and as will appear in the citations below. We conclude, then, that this war proceeds from natural law, but that it is approved by positive law, both civil and canon, and also qualified and regulated by them. And perhaps if understood in this way the gloss on l. *ut vim* may be saved.

Secondly, the gloss said, "not by the law of heaven." The gloss seems to mean that the divine law does not allow violence to be repelled by violence. This view of the gloss seems to be supported by certain texts; for it is written in Luke, ch. vi, "unto him that smiteth thee on the one cheek offer also the other"; xxiii, q. i, at the beginning. It is also written, "whosoever shall compel thee to go a mile, go with him twain"; Matthew, ch. v. It is also written in Romans, ch. xii, "avenge not yourselves, but rather give place unto wrath." Christ also said to Peter, when he wished to defend Him, "put up again thy sword into his place," Matthew xxvi; quoted in xxiii, q. i, at the beginning. These passages might move us to agree with the gloss in holding that it is forbidden by the law of heaven. But I think that the gloss is wrong, as may be clearly shown. And first as follows. An act which is consonant with charity is lawful by divine law, and defence of oneself is such an act. Therefore, &c. The major is proved; for charity excludes any act which is at variance with divine law, since it is incompatible with such an act, being itself the foundation of everything that is lawful. This is proved by De Pœnit., dist. ii, [si] *radicata*, and ch. *caritas est, ut mihi videtur*. And the second point, the minor premise, is proved by the same "distinctio," ch. *quia radix*. For the chief act of charity is to love one's neighbour as oneself, as appears in the next canons, and De Pœnit., dist. ii, ch. *caritas est, § proinde*; therefore it implies self-love and self-conservation, and if so, self-defence. Therefore the law of heaven allows one to defend oneself. Moreover, the divine law allows one to defend one's neighbour from death, even against his will. Therefore much more does it allow one to defend oneself. The consequence follows by the reasoning last given. The antecedent is proved by the text in xxiii, q. iv, *ipsa pietas*, and ch. *displicet*. Moreover, the divine law forbids a man voluntarily to strive after his own destruction. What I mean by that is merely this: that if he duly strives after some other thing approved by the divine law, even though in gaining that thing self-destruction follows as a consequence—that is not forbidden; as where a man, in order to obtain the state of eternal blessedness, afflicts his own body, no one doubts that the affliction is destructive of the body, yet this is not its final end, but the avoiding of carnal vices, and the obtaining of the eternal state. The same might also be said of those who have allowed themselves to be slain for the sake of the catholic faith; for their final purpose is not the destruction of their body, but the defence of the faith, for the sake of which they voluntarily expose themselves to temporal death, which the divine law allows. But one who does not defend himself from death, when he can, voluntarily kills himself and compasses his own destruction;

and so this is forbidden by divine law. The major is proved ; for those who kill themselves in this way are regarded as condemned by the divine law, as we say of Judas and those like him. The minor is proved ; for one who does not defend himself from death, when he can, and does not come under the cases above mentioned, and does not fail to do so merely from cowardice, desires his own death, and kills himself by another's hand ; which is just as if he killed himself by his own hand, according to the rule *qui per alium*, Sext, De reg. iuris. Moreover, the divine law does not absolutely forbid acts which proceed from natural law, but modifies and controls them. This is clear from illustrations ; for it does not altogether forbid food and drink, or sexual intercourse, or the like, but modifies and controls those actions, rejecting extremes, and approving the mean, as does the moral law also ; Ethics ii, iii, and iv. But if the divine law were absolutely to forbid self-defence, since that action proceeds from an instinct of nature, it would absolutely destroy an act of nature, which is absurd, for the reasons given above. Moreover, the canon law allows it ; therefore the divine law does not forbid it. The antecedent is proved by De restit. spol., ch. *olim* ; Clem., De re iudic., *pastoralis*, § *ceterum* ; and more clearly by Clement, De homicidio, *si furiosus*. The consequence holds ; for the canon law is interchangeable with the divine law, and so they cannot contradict one another ; for they tend to the same end, though in different ways. For the canon law treats of the government of the earthly kingdom, that human society may be preserved in the world, which is also the subject of the civil law ; but the canon law goes further, for it disposes and prepares for the state of eternal happiness, to which the divine law leads ; and so it is necessary, if we observe the identity of their end, that everything which the divine law forbids, should be forbidden by the canon law. Accordingly, we may pass over other arguments which might be adduced without number, and conclude that the gloss is not correct in saying that the law of heaven does not allow self-defence.

To the authorities cited to the contrary, the true answer is that given by Gratian in xxiii, q. i, § *his ita*. The answer is, that they are to be understood to refer to the inner preparation of the heart, not the conduct of the body ; for a man ought to have humility of heart within, as Augustine shows in the Sermon on the Centurion's Son, when he says, " a man ought to be prepared," &c. See xxiii, q. i, ch. *paratus*.

This discussion gives us the answer to our third question as to whence this war arises, and what law allows it.

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*What persons may declare this particular war ?*

[Ch. lxxxi.]

We must consider the fourth question, namely, Who may declare it ? On this subject I begin by saying that it is one thing to ask who may defend himself, and another to ask who may declare the war above defined, the object



of which is defence. If we ask to whom defence is allowed, I say that it is allowed to all natural created and corruptible beings. And I say "created and corruptible," because it is not allowed to the heavenly bodies, because they cannot be acted upon by any hostile agent, since their bodies are not receptive of foreign impressions, as the Philosopher says in *De Cælo et Mundo*, book ii, since they are not composed of the matter which is the matter of generation and corruption. And so there is no need of defence, since they cannot suffer. But to all material things defence is allowed by natural first principles, since they are accessible to suffering ; and such defence proceeds from natural law, which is a force inborn in things, creating like from like. For by creating its like a thing preserves itself in its kind, which cannot be done for ever in the individual ; and also by its individual action, it strives to destroy its opposite, which resists it, and conversely. And this is the first mode of natural law, as to which see the gloss on dist. i, can. *ius naturale* ; and it is commonly noted in ff. *De iustit. et iure*, l. i, § *ius naturale*. So, then, self-defence is allowed naturally to all material things ; and it proceeds from the strength placed by nature in any being, as any one may perceive by his senses by taking natural illustrations. But if we ask who may make the war above defined, then I say that men only may do so, and not other creatures, as the definition of the war proves, when I said, "something alien presented to human desire," &c. And now we must ask whether all men may make it.

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*Whether clerks may declare this war ?*

[Ch. lxxxii.]

And first, I ask whether clerks may declare this war. That clerks may not do so is proved by *De homicidio*, ch. *suscepimus* ; by dist. xlvi, can. *seditionarios* ; and by the texts of xxiii, q. viii, ch. i, and ch. *cum a Iudæis*, with the chapters following, down to ch. *his*. Such is the answer given. It is proved by ch. *convenior*, in the same cause and question. That they may do so is proved by *De restitution. spol.*, ch. *olim* ; *De sent. excom.*, ch. *si vero*, and ch. *ex tenore* ; dist. i, *ius naturale* ; ff. *De iustit. et iure*, l. *ut vim* ; ff. *De vi*, l. iii, § *si quis*. The text in Clem., *De homicidio*, *si furiosus*, is clearer. On this there have been the opinions recited by the gloss on xxiii, q. i, in the summary, and the same cause, q. viii, in the summary ; for some have said that no one, not even a lay person, is allowed to repel force with force by striking back, but only by preventing. This opinion is disapproved by Clement, *De homicidio*, *si furiosus*. Others say that laymen may strike back, but not clerks, and this view suffers from the same defect. Others say that if force is used to a person, it is lawful to repel it, even by striking back, and even for clerks. This is approved by Clem., *si furiosus*, provided the conditions which he mentions are satisfied. But if the force is used to things, then the answer is otherwise. But whether this second statement is true, I shall discuss below.

Hugo refused to say that a man ought in no circumstances, however great the necessity in which he was placed, and even if he could not escape by any other means, to kill another, but rather to allow himself to be killed. He has a note to this effect on dist. l, can. *de his*. The gloss there notes the contrary; and on De homicidio, ch. *sicut dignum*. I do not insist on this, since, as I said, there is the text in Clem., De homicidio, *si furiosus*; and even if there were no text on the subject, expressly deciding it for or against, we should be led to the same conclusion by the reasons which I adduced to prove that it is not forbidden by divine law.

*Whether, although a clerk may defend himself even by killing another,  
he may do this in a church?*

[Ch. lxxxiii.]

Secondly, I ask whether, if a clerk may defend himself in this way, even by striking back and killing another, he may do this in a church. And it seems that he may not; for although a law may permit certain acts generally, yet they may be forbidden by reason of the place, so that the general permission is restricted by the special provision; ff. De pœnis, l. *sanctio legum*; ff. De alim. leg., l. *alimenta*, § *basilicæ*; ff. De legat. iii, l. *uxorem*, § *felicissimo*; and De rescriptis, ch. *pastoralis*. Sext, rule *generi*, suffices. That many acts are permitted generally by a law, which are none the less forbidden in special circumstances, is proved by the texts of Sext, De immun. eccles., ch. *decet*; and i, q. [i] iii, ch. *vendentes*. So, therefore, in the case proposed, and much more, since this is an act by which the church may be polluted; De consecr. eccles. vel altaris, ch. *proposuisti*; and Sext, same title, the single chapter. Moreover, quarrels and brawls generally are forbidden in churches; ch. *decet*, just cited. Therefore this act must be forbidden, since it is a kind of brawl. To the contrary, it may be urged that the laws which permit it speak in general terms, and therefore they ought to be so understood; ff. De lega. præstandis, l. i, § *generaliter*. This part I believe to be true, since the action arises from natural law, and it is not disapproved by divine law, and the reason of the law sanctioning it is of general application, without distinction of places. For natural law introduced it in order that a man might preserve himself as long as the strength of natural first principles lasts, and this reason applies in a church as much as anywhere else. It is easy to answer the authorities cited to the contrary, for the acts forbidden in a church are either acts which, from their nature, belong to the class of bad acts, or which belong to the class of permitted acts, such as contracts. Yet their exclusion from a church does not cause great danger on the ground of delay, since they may be performed equally well outside the church, at the pleasure of the contracting parties, since they have their origin in the will of the parties; C. De act. et obligationibus, l. *sicut*. But in the present case, if a man were not allowed to repel force with force in a church, the danger would be immediate, because he would



easily be killed at once. As to the other argument, that pollution might follow, the solution is this: The preservation of a man, which cannot be restored, is more to be considered than a church, which may be resanctified. And perhaps we might say that, for a church to be polluted, the spilling of the offender's blood is necessary; see the note on Sext, *De consecra. eccle. vel altaris*, the single chapter.

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*Whether a clerk, attacked in the act of celebration, may defend himself, and kill his assailant, and so continue to celebrate the office?*

[Ch. lxxxiv.]

Thirdly, I ask whether, if a clerk is attacked in the act of celebration, he may leave the office, defend himself, and kill the assailant; and whether, if he kills him in thus defending himself, he may continue to celebrate the office. As to the first point, it appears that he ought not to leave the office, but that he is bound to perform it as long as he can; see the text in vii, q. i, *illud*, and ch. *nihil*. Moreover, temporal things are to be postponed to spiritual; xii, q. i, *præcipimus*; *De pœnit. et rem.*, *cum infirmitas*; *C. De episcop. et cler.*, l. *sancimus*. The contrary view is supported by other texts; for an office begun may be left uncompleted because of some physical impediment supervening, and for that reason the laws provide that the priest should not be alone in a church where there is a store of temporal goods. This is proved by the texts in the chapters just cited; vii, q. i, *illud*, and ch. *nihil*. The object of this is that one man may take the place of another and continue the celebration, when the other has left it; *De consecratione*, dist. ii, the last chapter; unless the words of the mass have been begun and not completed, because then he is bound to begin again, since they must not be divided, as in baptism and ordination; dist. xxiii, *quorundam*, and note the gloss there, and ch. *nihil*, where the gloss should also be noted. But if a man attacks the celebrant, to kill him, this is an impediment, nay, it is clearly a mortal danger to the celebrant; and therefore he may leave the office, and consequently may rid himself of the danger threatening him, if he can, even by killing the assailant. The authorities quoted to the contrary are easily answered; for although it is true, as a general rule, that spiritual things are to be preferred to temporal, yet in this case the celebration of the spiritual office is not to be preferred, since the law allows this, on account of the irreparable damage that would follow, and it does not result in the postponement of the spiritual office, because the office may be completed by another, or by the same celebrant, after the danger has been averted. As to the second point, I say without arguments that if he does kill the assailant in defending himself, he may resume the celebration of the office, provided the conditions mentioned in *Clem.*, *si furiosus*, are satisfied. For what he has done is no sin, since he did it by the authority of the law, and by that authority no man sins; xxiii, q. iv,

ch. *qui peccat* ; hence he does not commit an irregularity ; see the passage of Clem., *si furiosus*, above cited. So there seems to be no impediment to prevent him celebrating, as Clement proves in the passage quoted.

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*Whether one who is attacked while baptizing, ordaining, confirming, anointing, or celebrating the several sacraments may postpone the celebration of those sacraments, though begun ?*

[Ch. lxxxv.]

In the fourth place, the same question, arguments, and solution apply to one who is baptizing, ordaining, anointing, or celebrating the several sacraments. May he postpone their celebration for the sake of his own protection, even if he has begun it ? And in all these cases the answer is the same as above.

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*Which is to be preferred, the death of a priest who is attacked while he is baptizing a child at the point of death, or the eternal life of the child, lest he should die without baptism ?*

[Ch. lxxxvi.]

My fifth question is this : A priest is baptizing a child who is at the point of death, and an attack is made on him with intent to kill him ; which should he rightly choose, to finish the celebration of the sacrament, that the child may not die without baptism, and himself to be killed ? or, on the contrary, should he choose to save his own life, and to allow the child to die without baptism ? In the same way, put a question of a priest delaying the Body of Christ to a sick person at the point of death.

As to the first question, it appears that the priest ought rather to allow himself to be killed than the child to die without baptism. For if the child dies without baptism, he dies eternally, as Augustine proves, writing to Peter the Deacon, *De consecrat.*, dist. iv, *firmissime*, and ch. *regenerante*, and ch. *nulla*, in the same "distinctio." The Apostle shows, in the Epistle to the Ephesians, ch. iv, that all are condemned for the offence of one. Thus original sin, if its effect is not extinguished by the sacrament of baptism, leads to eternal damnation ; but the priest only dies temporally, provided that he has the other requisites for eternal salvation ; but temporal death is to be accounted less than spiritual. So Augustine argues ; xxiii, q. iv, *displicet*, and ch. *ipsa pietas* ; therefore the priest should rather choose to die, in order that the child may not perish eternally. Moreover, of two evils the less is to be preferred ; dist. xiii, *nervi testiculorum*, and similar passages ; but temporal death is a less evil than eternal ; xxiii, q. iv, ch. *ipsa pietas*, and ch. *displicet*. And the death of the child is eternal ; *De consecr.*, dist. iv, ch. *firmissime*, and ch. *nulla*, and ch. *regenerante*. But the death of the priest



is temporal, and therefore to be preferred. Moreover, the greatest act of charity is that one should love one's neighbour as oneself ; De Pœnit., dist. ii, *proximos*, and § *proinde*, and ch. *caritas est, ut mihi videtur*. But if this priest should prefer his own temporal life to the eternal salvation of the child, he would not be loving him as himself, and so would lack charity, as is proved. For eternal life excels temporal life beyond all comparison. Therefore, by preferring temporal life for himself to the eternal life of his neighbour, he loves himself far more than his neighbour, and so abides without charity. Moreover, that course which is followed by the fewer evils is to be preferred ; but the death of the priest is followed by a less evil than the death of the boy without baptism ; therefore the death of the priest is to be preferred. The major is proved. For the rule in morals is this, that more evils, other things being equal, are worse than fewer evils, and more to be avoided. This is proved by dist. xiii, can. *nervi*. The minor is proved ; for if the priest's life should be preferred, two evils follow, namely, the eternal death of the child, as I showed above, and neglect of the cure of souls, which is a mortal sin ; De æta. et qualitate, can. *cum sit ars*. But if the priest's temporal death should be preferred, only one evil follows, namely, temporal death, which, if regard is had also to the quality of the act in itself, is beyond comparison a less evil than perpetual death ; and so we must conclude as above.

The contrary view seems to be supported by the texts which speak in general terms of allowing any man to defend himself in case of necessity. I need only quote Clem., *si furiosus*, a passage often cited above. This is confirmed by the laws which say that charity begins with oneself ; C. De servit. et aqua, l. *præses* ; and De iureiurando, ch. *petitio*.

Solution : In the examination and solution of this question we must examine cases which are free from doubt. For there are such cases in the problem before us. Thus, if we suppose that the child might be baptized by another, even a layman or a woman, in case the priest should leave the celebration of the sacrament, there would be no doubt that the priest ought to prefer his own safety ; for where the child might probably live until the danger had been dealt with, and where this is practically certain, I should consider it beyond all question that the priest should prefer his own safety ; nor do the reasons cited conclude the case to the contrary. Let us suppose the question to arise, not in the case of an infant, but of an adult, who, though he does not receive the baptism of water, will none the less die, if he has the true faith, with the baptism of water. Still I should not consider the question doubtful, but I should rather say, as above, that the safety of the priest should be preferred. But we have to discuss the case of a child who is certain to die without baptism, if the priest leaves the ceremony. Or the question might be doubtful, where there was a probable doubt on the matter.

In the first case, where the matter is certain, I should consider that the temporal death of the priest should be preferred, on the authority of the laws above cited ; and I base my opinion on vii, q. i, § *hoc etiam*, the words *cum*

*vero specialiter*, arguing from the converse case, and the note of the gloss there. For where the question is of a single bishop, and the church cannot be preserved if he flees, he ought to expose himself to death for its sake, as in the passage cited. This applies with great force to the case of a priest and his own parishioner, and I am moved to this conclusion by the reasons above given.

But where there is a reasonable doubt whether the child will die or will live until the danger is over, whereas the death of the priest, if he should not leave the ceremony, is certain, I should still think that the death of the priest is to be preferred, since, when matters are uncertain, there is no certain place for conjecture; ff. De verbor. obligationibus, l. *continuas*, § *illud*. But where there is reasonable doubt on both sides, I should be of the same opinion as in the first case above, as regards the sacrament of baptism.

But in the sacrament of the Body of Christ, if the gloss on De pœnis et remiss., ch. *quod in te*, which says that the viaticum is not a sacrament of necessity, were true, then the question would not be very doubtful. But that gloss is not true, and is contradicted by another gloss on De transaction., ch. *veniens*, the first gloss; and the latter is true, as is noted on De sacrament. non iterand., in the rubric. The text of De pœn. et remissionibus, ch. *omnis*, seems to support this. Nevertheless, even assuming it to be true that it is a sacrament of necessity, I should still say that the temporal life of the priest should be preferred. I am moved by the consideration that, even if a man dies without receiving the Body of Christ, the omission not being his own fault, nor due to his contempt, he does not die eternally, as in baptism. For this reason the present case is not concluded by the reasons above given. I should say the same of the sacrament of penance, because a man who dies even without oral confession, where this is not his own fault, is saved by the virtue of repentance alone, as is noted in De Pœnit., dist. i<sup>(9)</sup>, in the summary, and in § *his ita*. I should say exactly the same of the sacrament of unction.

*Whether a monk may defend himself without the licence of his abbot?*

[Ch. lxxxvii.]

Sixthly, I ask whether a monk may defend himself without the licence of his superior. It seems that he may not. For a monk does not meditate, and ought not to meditate, an act of volition, except by the leave of his superior, because without his leave he lacks the faculty of willing and not willing; xii, q. i, *nolo*, and ch. *non dicatis*; Sext, De electione, *quorundam*, and ch. *si religiosus*; and Clem., De procuratoribus, *religiosus*. But this act of defence proceeds from mere free choice, because a man can choose not to defend himself; therefore he may not do so without the leave of his superior. Moreover, a monk is dead to the world; xvi, q. i, *Monachi*, and



ch. *placuit* ; therefore acts which tend to the defence of life are not competent to him. Moreover, even acts which tend to good are forbidden to a monk without the leave of his superior, such as making vows, travelling abroad, and the like, by the laws just cited. An argument to the contrary is that the defence of one's own person is an act arising from natural instinct, and not disapproved by law divine or other ; therefore it is lawful for a monk, since he is not dead to natural acts, but only to civil acts, as appears from the laws above cited.

Solution : I think that if a monk can obtain the leave of his superior to defend himself without the delay being dangerous, he ought to ask it. This is proved by the laws cited in the first part of the discussion. But if he cannot obtain the leave of his superior, because the latter is not present, and there is danger in delay, then he may defend himself without the leave of his superior. My reason is, that this is an act allowed by natural law, which the superior could not without cause absolutely forbid, perhaps even the Pope could not, since nature has sanctioned it, and in these matters he is not regarded as being subject to his superior, any more than he would be if the superior were absolutely and without cause to forbid him food and drink. I rely on the gloss on xii, q. i, ch. *non dicatis*. For the gloss there asks whether a monk may give alms to a poor man who will die of hunger, unless he receives aid, without the leave of his superior, and it holds that he may. For he is bound, in a case of necessity like this, to provide, if he can, for the life of another by an act otherwise forbidden to him ; how much more, then, may he provide for his own life by an act dictated to him by nature ! I see no reason why he should not ; and Raymond even, in the summary of *De negot. sæcularibus*, § *sed quæritur circa hoc*, says that if the abbot should forbid him, he still ought to do it, because then he would be obeying, not man, but God ; dist. viii, *quo iure*.

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*Whether a slave may defend himself without the command of his master ?*

[Ch. lxxxvii bis.]

The seventh question is, whether a slave may defend himself in this way without the command of his master. It seems that he may not. For the acts of slaves are deemed null ; C. De rei vind., l. *servum* ; ff. De iudic., l. *vix certis* ; ff. De acquir. hæreditate, l. *si quis mihi bona*, § *iussum*. On the contrary, at the present day masters have no power of death over their slaves ; ff. De his qui sunt sui vel ali. iuris, l. i. This is confirmed. For a master cannot absolutely forbid natural actions to his slave, if the prohibition would cause the death of the slave ; see the law last above cited. Solution : as in the last chapter in the case of a monk.

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*Whether persons outlawed, who may sometimes, according to the statutes of states, be killed with impunity, may defend themselves ?*

[Ch. lxxviii.]

The eighth question is, whether persons whom any one may kill with impunity, such as outlaws, concerning whom municipal laws sometimes ordain that they may be attacked with impunity, may defend themselves. It seems that they may not. For if violence is lawfully inflicted by a private person, it is not lawful to defend oneself; ff. *Ad legem Aquiliam*, l. iv. But here it is lawfully inflicted, because a law gives authority; ff. *De acquir. possessione*, l. *iuste*. This is confirmed thus: If violence is inflicted by a public person, it is not lawful to defend oneself; ff. *De iniur.*, l. *iniuriarum*, § i; ff. *De rei vindic.*, l. *qui restituere*. But here the private person is in a quasi-public position; for a law makes him its servant by allowing him to punish; and a law can do this—I mean, it can give jurisdiction to a private person; ff. *De iurisd. omn. iudic.*, l. *et quia*; and *Ne prælati vices suas*, ch. i, where the point is noted. Therefore, we may infer that it is not lawful for him to defend himself.

To the contrary is the argument that this is a private person; and even if he were a public person, it appears that violence is inflicted unlawfully when it is inflicted without the due course of law being observed; C. *De sent.*, l. *prolatam*; and *De probationibus*, ch. *quoniam contra*.

Secondly, I think the words of the law must be considered; for sometimes a law permits a thing in the sense that no law forbids it; xxxi, q. i, *hac ratione*. Sometimes a law permits a thing contrary to human ordinances, as formerly to contract a marriage in the fifth degree; xxxv, q. iii, *quædam*. In a third sense, a law permits a thing in the sense that it tolerates it; it does not make an act otherwise unlawful lawful, but it does not punish an unlawful act which remains unlawful, as the text says in dist. iv, can. *denique*. For those who eat flesh at midnight of Sunday are not punished; and the text says the act is permitted, meaning that it is not punished because of the numbers and the scandal. So in other cases adultery is permitted, in order to avoid homicide; xxxiii, q. iii, *si quod verius*; and yet adultery is not made lawful by the law which permits it in this sense, but the act remains unlawful, and only the penalty is remitted. So in the case proposed; if the law permits the act in the sense of tolerating it, and remitting the penalty, the act remaining unlawful, because of the odium attached to the outlaw, then I should think that the outlaw may defend himself; and the citations given above do not conclude this question. But if the law should permit the act in the sense of positively making it lawful instead of unlawful, then the answer would be different. These modes of permission are noted by the gloss on dist. iii, *omnis autem lex*.

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*Against whom may this particular war be declared ?*

[Ch. lxxxix.]

We must consider the fifth question, which is, against whom this particular war is allowed. And as to this, many questions arise.

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*Is it lawful against a superior ?*

And the first question is, whether a man may declare this war against his own superior. The gloss on ff. De iustit. et iure, l. *ut vim*, says not ; it is based on ff. De rei vindic., l. *qui restituere* ; and ff. De iniuriis, l. *iniuriarum*, § i. The text of xi, q. iii, ch. *qui resistit*, supports this. I think that the gloss, as it stands, is not quite accurate, but that a distinction must be drawn. Either it is clear that the superior is acting unlawfully, or it is clear that he is acting lawfully, or there is a doubt. In the first case, I think resistance should be offered ; C. De iure fisci, l. *prohibitum* ; and C. De metatis, l. *devotum*. And this is especially so when what he does is something outside his office, not concerning himself. In the second case, resistance should not be offered ; ff. De rei vindic., l. *qui restituere* ; and ff. De iniuriis, l. *qui iniuriarum*, § i. In the third case, it should only be offered if what has been done is something which cannot later be repaired. For such things, when once done, cannot be regarded as undone ; ff. De captivis, l. *in bello*, § *facti*. For in such cases the law which forbids an appeal before final judgement allows an appeal, as is noted in C. Quor. app. non recipiuntur, l. *ante sententiæ tempus*.

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*Is it lawful against a judge, even if he acts unjustly ?*

[Ch. xc.]

Secondly, the gloss on the said law, *ut vim*, asks, What if a judge or magistrate acts unjustly ? Martinus answers that no resistance should be offered, relying on ff. De iniuriis, l. *iniuriarum* ; but action should be brought against the magistrate, during his term of office if he is one of the lower magistrates, or after it is over if he is one of the higher ; ff. De iudic., l. *pars literarum* ; and ff. Quod met. causa, l. iii. I do not think this gloss is true where the act is an irreparable one. Suppose that a judge attacks me with the intention of killing me, and that he is one of the higher magistrates, am I to wait until his term of office is over ? or, if he is one of the lower magistrates, must I wait until my complaint can be brought before the president ? Certainly not ; because such acts, as I said above, are irremediable ; ff. De captivis, l. *in bello*, § *facti*.

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*Is it lawful for a son against a father ?*

[Ch. xci.]

The third question is, whether it is lawful for a son against a father. It seems that it is not, because of the right of "patria potestas"; C. De pat. potest., throughout. This view is confirmed. For a son may not attack himself, therefore he may not attack his father, since they are regarded as one person; C. De impub. et aliis substit., the last law; Instit., De inutil. stip., § *ei qui*; C. De agric. et cens., l. *cum scimus*; Authent., De iureiurando a moriente præstando, § i. To the contrary is the argument that this mode of defence comes from natural law, as I proved above in the third principal part; and it is not disapproved by any law, but rather approved by all, as I there showed. Therefore "patria potestas," being an institution of civil law, does not destroy this right belonging to a son, since natural rules are not destroyed by civil. Instit., De iure nat. gent. et civili, § *naturalia*; dist. v, *ius naturale*.

Solution: I say that if a father does something to the son to correct him, the act being one that is permitted by the right of "patria potestas," and does not exceed that right, the son may not defend himself, because herein the civil law which introduced "patria potestas" limits natural law, which it can do, as I showed above. But if the father does something to the son which exceeds the rights allowed him by "patria potestas," then I should think that he may defend himself. And this applies to a son living in "patria potestas"; for if a son has been emancipated, the question is simpler. The answer to the citations to the contrary appears from what has already been said.

*Is it lawful for a monk against his abbot ?*

[Ch. xcii.]

The fourth question is, whether it is lawful for a monk against his abbot. It seems that it is not, for a monk cannot exercise his will without the licence of his abbot; xii, q. i, *nolo*, and ch. *non dicatis*; De statu monach., *cum ad monasterium*. But this act is controlled by the will, since the monk can refrain from it; and the superior does not give his licence, but rather a tacit and implied prohibition, which has more weight than a verbal one; ff. De ædilit. edict., l. *si tamen*, § *ei quod*; ff. De legi., l. *de quibus*, at the end; De appellationibus, *ad audientiam*, and ch. *ut nostrum*, and ch. *dilecti*. This is confirmed thus: For a monk is dead to the world; xvi, q. i, *monachi*, and ch. *placuit*; and Authent., C. De sacr. sanct. ecclesiis, *ingressi*. Therefore an act in defence of his earthly life is not competent to him.

On the other hand, it appears that this act proceeds from natural law, and that no positive law disapproves of it, although it is limited thereby. Therefore it is not denied to a monk, who, though he is civilly dead, yet is



not so naturally, as appears from the laws above cited. Solution : If the superior attempts to do something to the monk which the common law allows him to do, by way of correction or the like, or in accordance with the rules of the order, then the monk may not resist ; nor in this case should he even be heard on appeal ; De appell., *cum speciali*, and ch. *de priore*. But if the superior attempts to do something to the monk which does not belong to his office, as regulated by law or by the rules of the order, then he may defend himself, especially where delay would be dangerous, as if the abbot should attack the monk to kill him on the spot ; which is only natural when we remember that a monk may even lay an accusation against an abbot, if he does anything contrary to his duty ; De accusat., ch. *ex parte*, and same title, ch. *cum olim*.

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*Is it lawful for a slave against a master ?*

[Ch. xciii.]

The fifth question is, whether it is lawful for a slave against a master. It appears that it is not, since a master has absolute power over a slave ; ff. De his qui sunt sui vel alieni iuris, l. i. This is confirmed thus : For a slave is bound to help his master in war ; otherwise he is punished ; ff. De S. C. Silaniano, l. *si quis in gravi*. Therefore he may not attack him ; De nat. ex lib., the single chapter ; and De restit. spol., ch. *conquærente* ; ff. Si servit. vind., l. *altius* ; ff. De condic. indebit., l. *frater a fratre* ; dist. xxvi, *una tantum* ; dist. xxv, the last canon ; xvi, q. i, *Silvester* ; ff. De fideiuss., l. *tutor* ; ff. De admin. tut., l. *quotiens*.

To the contrary : At the present day the power of masters over slaves has been restricted ; ff. De his qui sunt sui vel alieni iuris, l. i. For to-day they have no power to put them to death, nor to treat them with extreme severity. Therefore, &c. Solution : As I said of the monk, so here, if the master attempts to do something to the slave which the laws permit him to do, the slave may not defend himself. For in this an act which proceeds from natural law is limited by positive law, which limits the power of masters over slaves. But if he attempts to do something which is beyond what the law allows, then the answer is otherwise, because here, although slaves are not recognized as regards civil acts, yet as regards natural acts they are, and this is a natural act.

This helps us to the solution of similar questions. Is it lawful for a vassal against his lord ? a pupil against his master ? a soldier against his officer ? a wife against her husband ? These questions admit of a uniform solution, which is, that if the act attempted is one which the law permits, defence is not lawful. If it goes beyond this, and is contrary to legal duty, then otherwise, as I showed fully above. This brief discussion shows us against whom defence is lawful, and the rule above given will solve an infinite number of questions.

*On behalf of what persons is it lawful to declare this particular war ?*

[Ch. xciv.]

The sixth point which we have to consider is this : On whose behalf is it lawful ? And first as to the persons on whose behalf it is lawful. And I take it as undoubted that it is lawful in defence of oneself. This is proved by the text of ff. De iustit. et iure, l. *ut vim* ; and ff. De vi et vi armata, l. i, § *vim vi* ; and Ad leg. Aquil., l. iv ; and the same title, l. *scientiam*, § *qui cum aliter* ; and clearly in Clemen., De homicidio, i. Other cases are examined below.

*Is it lawful for a father on behalf of his son ?*

[Ch. xcv.]

And first I ask whether it is lawful for a father on behalf of his son. Treating subjects which admit of no doubt without arguments, we must say that it is. For a father loves his son as himself ; ff. Quod met. causa, l. *isti quidem*. For the son carries on his personality into the future ; ff. De verb. sig., l. *liberorum*, at the end ; also because they are regarded as one person ; C. De impub. et aliis substit., the last law ; Authent., De iureiur. a moriente præstito, at the beginning ; Instit., De inutil. stip., § *ei quem*. This point is clear. Equally so is the converse case of a son on behalf of his father.

*Is it lawful for a husband on behalf of his wife ?*

[Ch. xcvi.]

The second question is, whether it is lawful for a husband on behalf of his wife. Clearly it is, for an injury inflicted on a wife is inflicted on the husband, and he may bring an " *actio iniuriarum* " for it ; and even a betrothed person may do so ; ff. De iniuriis, l. *item apud*, § [*si sponsum sponsum*]. And a husband may kill a wretch found committing adultery with his wife ; ff. De adulteriis, l. *marito*, and l. *capite quinto* ; C. the same title, l. *Gracchus* ; even one who gossips with her after being warned, according to the Authentics, and he does not contravene xvii, q. iv, *si quis suadente*. As to one who lays violent hands on a clerk for this cause, see De sent. excommunicationis, ch. *si vero*, § *nec ille*.

*Is it lawful on behalf of a brother, sister, and other relations ?*

[Ch. xcvi.]

The third question is, whether it is lawful on behalf of a brother, a sister, and other relations, and persons who are not related. And the gloss on ff. De iustit. et iure, l. *ut vim*, says that the affection should be considered. It quotes ff. Quod met. causa, l. *isti quidem* ; and ff. Mandati, l. *cum servus*.



Others prefer to say that it is lawful on behalf of all relations. Their argument is, that if a man does an injury to one relation, he is regarded as doing it to all, although the others cannot bring the "actio iniuriarum"; ff. De iniuriis, l. *lex Cornelia*, at the beginning. They confirm this view by the argument that it is lawful to repel force by force in defence of property; C. Vnde vi, l. i; and ff. De vi et vi armata, l. iii, § *eum igitur*. And one who wishes to repel force by force in defence of his property may summon his friends and relations. Therefore he may help his friends and relations. And so they conclude that it is lawful on behalf of a relation, without any qualification. This opinion seems to be confirmed. For man owes a duty to man; ff. De servis exportandis, l. *cum servus*. Therefore, in accordance with that duty, he may help him. This is confirmed by C. De appell., l. *addictos*; better by ff. De appell., l. *non tantum*; where, too, a stranger appeals on behalf of a person condemned in a criminal trial, even against that person's wish. This is supported by C. De liberali causa, l. iii. Jacobus Buttrigarius, on the law *ut vim*, draws the following distinction: Either I desire to defend the injured person of my own motion, and without request from him, and I can do this by way of legal process, but not by an act; and in this sense are understood the laws just quoted, *addictos*, *non tantum*, and C. De lib. causa, l. iii; or I desire to do this, not of my own motion, but at the request of the injured person, and then I may do so even by an act; ff. De vi et vi armata, l. iii, § *eum igitur*. Others draw a distinction. Either the assistants belonged to the company of the injured person, and then they might repel an injury inflicted on his person; the proof of this is in ff. De iniuriis, l. *item apud*, § *si quis virgines*; otherwise they may not, as the gloss on Vnde vi, l. i, lays down without qualification, where Cinus quotes this opinion in the antepenultimate question. Others, like Jacobus of Ravenna, say without qualification that it is lawful; and they give this reason: Another may help me in my affairs; ff. De negot. gestis, l. i. Much more may he help my person, since the person is to be preferred to things; C. De sacrosanctis ecclesiis, l. *sancimus*. He quotes in support C. De adulterio, l. *Gracchus*; and if you say that in that case it was a son, he meets the difficulty by ff. Ad leg. Aquiliam, l. *liber homo*. No difficulty is raised by ff. De vi et vi armata, l. *cum fundum*. For there the person wished to act after an interval of time, which even the injured person himself would not have been allowed to do. No difficulty is raised, according to him, by ff. De iustit. et iure, l. *ut vim*, where it says, "for the protection of one's own body." He meets this by ff. De servis exportandis, l. *si servus*. This opinion seems to be followed by Cinus in C. Vnde vi, l. i, in the antepenultimate question.

In this conflict of authority, I should think we ought to consider, inasmuch as I have framed the question to refer indifferently to relations and to strangers, whether a relation or a stranger may repel violence done to another with force, as he might violence to himself, while avoiding the penalty of irregularity whether it be a clerk or a layman who kills or wounds

another in this case. A question may also be asked, in both cases, whether they may do so without incurring some other penalty of statute or canon. If we take the first question, I say that according to Clement., *De homicidio, si furiosus*, a man only avoids the penalty of irregularity if he does the act in defence of himself, not in defence of another, even a father or son. The text shows this by the words, "we hold the same of one who, not being able to avoid death otherwise, kills or wounds his own assailant." It speaks, then, of his own assailant, not of the assailant of another. This is also noted by the gloss there on the word "*suum*". In this case, then, I think the answer plain, as it is in the text. But if we ask whether he may act in this way, and avoid other penalties, statutory or canonical, we must first make a distinction. Either we speak of the penalty of excommunication, if a man strikes a clerk in this way, in the act of forcibly repelling violence done to another; and then I agree with Innocent that, if he is defending father, mother, wife, son, or daughter, he escapes the sentence of excommunication. He quotes ff. *Quod met. causa*, l. *isti quidem*; and ff. *De S. C. Silaniano*, l. i, § *si vir*. And the reason of the difference between this case and the one preceding is, that irregularity may be contracted even without wrongful intention, as may be seen where a judge gives a lawful order for a man to be put to death; dist. li, *qui in aliquo*. But excommunication under that canon requires an instigation of the devil; xvii, q. iv, ch. *si quis suadente*. But if the person is assisting a stranger, he does not escape the penalty of that canon, though he may have acted at the request of the injured person a thousand times over. Or we may speak of another penalty, personal or pecuniary; and then I draw a distinction, according as those who desire to repel force from one who has suffered violence are related to him or are strangers. If they are related, I follow the gloss on ff. *De iustit. et iure*, l. *ut vim*; limiting it by ff. *De iudic.*, l. *in privatis*; and ff. *De iniuriis*, l. *lex Cornelia*, at the beginning. If they are strangers, then they may either be members of the company of the person who suffered the violence, and then it is lawful; ff. *De injuriis*, l. *item apud Labeonem*, § *si quis virgines*; or they may be not members of his company, or they may desire to repel the violence after an interval, and then they cannot do it; ff. *De vi et vi arm.*, l. *cum fundum*; because not even the injured man himself could do so. What I have said applies to defence by act. But they might make a legal defence even after an interval, where the laws allow this; ff. *De appell.*, l. *non tantum*; *De liber. causa*, l. iii; and C. *De appellationibus*, l. *addictos*. And for this reason I do not think that the opinion of Jacobus Buttrigarius is true, when he says without qualification that they may make a legal defence. For this is not true without qualification. For there are cases in which a third party may not bring an action or an accusation on behalf of one who has suffered injury. I take an ordinary example in private delicts. So, then, it is true only where the law allows it. If, however, the defenders desire to repel the violence at once, then I should draw the same distinction as Jacobus. Either they are summoned by the



person who has suffered the violence ; and then it is lawful. For one who suffers violence may summon his friends to defend his property ; ff. De vi et vi armata, l. iii, § *eum igitur* ; therefore he may do so to defend his person, which is far more important ; C. De sacrosanct. ecclesiis, l. *sancimus*. Or else they are not summoned, and then it is lawful. The text is in Sext, De sent. excom., ch. *dilecto*. This is supported by xxiii, q. iii, *non inferenda*, and ch. *fortitudo* ; De sent. excom., *quantæ*. Also by the notes on C. De commerc. et mercatoribus, l. ii. And so I think that in this matter the opinion of Jacobus of Ravenna is true. The text is in ch. *dilecto*, already cited. For the text there says, " since any one is allowed to give his help to his neighbour or relation, to repel an injury from him."

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*Whether a man is bound to defend another against being killed ?*

[Ch. xcvi.]

The fourth question is, whether one who sees that another is about to be killed unless he helps him, is bound to help him. It seems that he is by ff. De agnoscendis liberis, l. *necare*. This is confirmed by the duty which one man owes to another ; ff. De servis exportandis, l. *servus*. It is confirmed again thus : An error which is not opposed seems to be approved ; dist. lxxxiii, *error*, and can. *consentire*, and can. *quid enim*. For one may receive a reward for relieving another from duress ; ff. Quod met. causa, l. *metum*, § *sed licet*. This is confirmed thus : In some cases there is a special provision that a man is bound so to help another ; ff. De S. C. Silaniano, l. i, § *hoc autem* ; and C. the same title, the last law. Therefore the common law is the converse ; ff. Ad municipalem, l. i ; and ff. De legibus, l. *ius singulare*. A gloss holds that a man is bound to help by word, but not by act ; ff. De reg. iuris, rule *culpa*. Nor is the duty which one man owes to another an objection, because he only owes it if he can act without danger to himself ; ff. De oper. lib., l. *habet* ; and ff. De verbor. significatione, l. *Nepos Proculo*.

*The fifth question relates to those who are bound to defend others from violence.*

[Ch. xcix.]

And as to this many questions arise.

*Whether a vassal is bound to help his lord ?*

And the first question relates to a vassal. And there is no doubt that he is bound to help his lord ; otherwise he loses his fief ; see the Usus Feudorum, Quæ fuit prima causa beneficii amittendi, ch. *prima autem causa*, § *item qui dominum*, and the following section.

*Whether a slave is bound to help his master ?*

[Ch. c.]

The second question relates to a slave ; and it is clear that he is bound to help his master, from the text of ff. De S. C. Silaniano, l. i, § *hoc autem* ; and C. the same title, the last law.

*Whether a soldier is bound to defend an officer in a war ?*

[Ch. ci.]

The third question relates to an officer in a war ; and it is clear that a soldier is bound to help him, if he can ; otherwise he is punished with death ; see the text of ff. De re milit., l. *omne delictum* ; and ff. the same title, l. iii, the last section.

*Whether a vassal, seeing his lord attacked on one side, and his father on the other, &c. ?*

[Ch. cii.]

The fourth question is this : A vassal sees his lord attacked on one side, and his father on the other, and each is equally in mortal danger unless he is helped, and the vassal can help only one of them ; whom should he help, his father or his lord ? The gloss on xxii, q. v, *de forma*, says that a vassal is bound to help his lord against his own son. The argument is that a son is bound to his father by the law of nature, but a vassal is bound to his lord by the bond of his oath ; Vsus Feudorum, Quæ fuit prima causa benefic. amittendi, the single chapter ; and according to this the question would be decided, because he would be bound to help the lord, to whom he is more closely bound. On this question I should say the opposite. And I am moved by the consideration that a son is bound by a natural bond to the father, of whom he was begotten. He is also bound by a civil bond, because he is under his " patria potestas " ; but he is bound to his lord by a civil bond only, as appears from xxii, q. v, ch. *de forma*, already quoted. But two bonds are stronger than one ; Authent., De consanguin. et uterin. fratribus, at the beginning. This is confirmed by reason of the priority of the obligation, for the paternal bond is prior to that of the lord. Therefore he is bound first to help his father ; ff. Qui potior. in pign. habeantur, l. *potior*, and l. *qui balneum*. This is confirmed thus : The oath to the lord is understood to save any precedent obligation ; for a right acquired by one person is not destroyed by a second obligation ; see the passages quoted, l. *qui balneum*, and l. *potior*. It is also confirmed by De iureiurando, ch. *petitio* ; for in swearing to help his lord, he is not taken to have sworn not to help himself before his lord, because that is his first duty ; C. De servi-



tutibus, l. *præses*. But by fiction of law the father is the same person as the son ; C. De impub. et aliis substitutionibus, the last law, with others to the same effect. Therefore, &c.

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*Whether a clerk, seeing his bishop attacked on one side, and his father on the other, each being equally, &c. ?*

[Ch. ciii.]

The fifth question is this : Suppose a clerk sees his bishop attacked on one side, and his father on the other, and each is equally in mortal danger unless he is helped, and the clerk can help only one of them ; whom should he help, the bishop or the carnal father ? Hostiensis, on De excess. prælat., ch. *gravem*, argues from the word “*fratri*,” which is there used, that clerks are more closely bound to their spiritual, than to their carnal fathers. He supports this by De translatione, ch. ii. If that opinion were true, the question would be solved. But on this question my own view is the same as on the last. I cite De postulatione, the last chapter<sup>9</sup>. For the text there says, if a clerk brings an action against the Church, and not on behalf of his own kindred, he loses his benefice ; therefore it is clear that he might do so on behalf of his own kindred. I cite De iureiur., ch. *petitio*, arguing as I did on the last question ; and I am moved by the reasons given in the last question ; and the gloss on xxx, q. iii, ch. *pittacium*, on the words “*multo magis*,” holds that in rendering temporal services we are more bound to a carnal father than to a spiritual. But in rendering reverence, the contrary is the case. The same point is noted by the gloss on dist. xxx, can. i. This is supported by the notes on dist. lxxxvi, *non satis* ; and dist. xlii, can. *quiescamus*.

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*For what things is it lawful to declare war ?*

[Ch. civ.]

As we have considered above in this part of our subject whether, and for what persons, it is lawful to declare this war, our next question now is, whether it is also lawful to declare this war for the defence of things ? And many questions arise about this.

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*Whether it is lawful for things lawfully possessed ?*

And first as to things lawfully possessed ; and as to these there is no doubt. The text is in C. Vnde vi, l. i. It is supported by l. iii, § *si quis autem*, the words *eum igitur*. Besides these, there is a section in ff. De vi et vi armata ; and De restit. spoliatorum, ch. *olim*.

*Whether it is lawful for things unlawfully possessed ?*

[Ch. cv.]

The second question is, whether it is lawful for things unlawfully possessed. The gloss on C. Vnde vi, l. i, treats of this question. And it seems that it is not, arguing from the converse sense of that text, which is a valid argument ; ff. De offic. eius cui mand. est iurisd., l. i, § *huius rei* ; De regularibus, ch. *cum virum* ; and dist. xxxii, can. *hospitiolum*. Arguments to the contrary are afforded by ff. De vi et vi arm., l. i, § *qui vi a me* ; and the same title, l. *cum fundum* ; and ff. Quod met. causa, l. *si cum exceptione*, § *Pedius*. Solution : For this apparent conflict of the laws, the gloss on the said l. i gives several solutions. The first is, that the word " maxime " is to be understood there ; and this gets rid of the contradiction, because it makes it lawful even for a wrongful possession. The second is, that the beginning of the law is to be taken with the ending, so that it reads, " recte licet." But the objection to this is that the law says in the middle, " sine vitio." Therefore it implies that the result would be different when the possession is " cum vitio." The third is, that it is always lawful for a lawful possessor, but not always for a wrongful possessor. For if the owner should come at once, a wrongful possessor may not resist him ; ff. De vi et vi armata, l. iii, § *eum igitur*. The fourth is, that the correct interpretation is, " neither by force, nor secretly, nor by licence " ; but this gloss is not approved. Jacobus of Ravenna, however, follows it so far as concerns one who wishes to defend his possession, so that if force is used by the person from whom the other is wrongfully detaining the possession, the other may defend it at the time, but not after an interval. But if he is wrongfully detaining it from another, then he may defend it at any time. And this is what the law means by saying that wrongful possession is good against strangers ; ff. Vti possid., l. ii ; ff. De acquir. poss., the last law ; ff. Si servit. vind., l. *loci corpus*, § *competit*. Here Jacobus seems to think that I may eject a clandestine possessor, if his clandestine possession is against me, because clandestine possession is wrongful ; ff. De acquir. poss., l. *cum quis*. For this opinion he cites ff. Quod cum eo, l. *si servus*. This opinion seems to be shared by the gloss on ff. Vti poss., l. i, § *interdictum*, in the middle of the big gloss on that passage, " nec tamen volo," etc. Cinus there holds the contrary, on the ground that no law can be found which provides that I may eject a clandestine possessor. Moreover, the law says I may repel force with force ; but one who enters clandestinely does not use force, since secrecy and force differ ; ff. De acquir. possessione, l. *clam possidere*, § *qui ad nundinas*. The opinion of Jacobus might be true of a possessor by licence, after he has refused to restore possession. For then he appears to be robbing the owner, as is noted in C. De acquir. possessione, l. *vitia*.

In this variety of opinions, I should think the second solution of the gloss would be true ; and this is also the one followed by Petrus de Bellapertica, on the said l. i, who, however, amplifies it as follows : " I, who wish to repel



force, possess either lawfully, or unlawfully. If lawfully, either I wish to repel it at the time and within the limits of justifiable defence, and this I can do ; see the said l. i ; and ff. De vi et de vi arm., l. i, § *vim vi* ; or after an interval, and then I cannot do it ; ff. De vi et vi armata, l. iii, § *si quis autem*, the words *eum igitur*. In the second case, that is to say when I possess unlawfully, either I possess unlawfully as against you, whose force I wish to repel, or as against another. If against you, then my possession is either forcible, or secret, or by licence. If forcible, then either you come to recover it at once, in which case I may not resist you, as appears from C. Vnde vi, l. i, if we argue from the converse sense." And this is its true and correct meaning, if it is rightly considered, together with the passages cited to the contrary. But if you come after an interval, then I may resist you, because you may not recover it on your own authority after an interval, and you would even incur a penalty by doing so ; C. Vnde vi, l. *si quis in tantam* ; and understand the phrase "after an interval" in the sense given by the gloss on ff. De vi et vi arm., l. iii § *eum igitur*. But if my possession is not forcible, but by licence, then after I have refused to give it up you may at the time repel force with force, and I may not resist. For by my refusal I am deemed to rob you ; C. De acquir. poss., l. *vitia* ; and from that it follows that you may repel force with force ; but before my refusal, you may not, although I may revoke the licence ; ff. De precario, l. *cum precarium*. But if my possession is clandestine as against you, then whatever the gloss on ff. Vti poss., l. i, § *interdictum*, and Jacobus of Ravenna on C. Vnde vi, l. i say, I agree with Cinus that you may not eject me, but you may enter, and if I do not admit you, my possession thereupon becomes forcible ; ff. De acquir. poss., l. *clam*, § *qui ad nundinas* ; and then you may eject me. But if my possession is not wrongful as against you, but as against a third person, then if you try to use violence against me at any time, I may repel your force with force ; ff. Ex quibus ca. in poss. eatur, l. *Fulcinus*, § *quid si adversus*. I have put forward these views with all respect to the opinion of the many distinguished persons who dispute on this doubtful point, submitting the opinions of all alike to corrections which seek after truth.

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*Whether one who has a right to defend property, and defends it within the limits of justifiable defence, escapes the penalty of irregularity, if he kills or wounds another ?*

[Ch. cvi]

The third question is whether, if a man, in repelling force with force in defence of his own property, happens to kill or wound the assailant, he escapes the penalty of irregularity. And I suppose him to act within the limits of justifiable defence ; otherwise the question would not arise. And it seems that he does escape it. For one who is defending his person escapes that penalty ; Clem., De homicidio, *si furiosus*. Therefore the conclusion applies to the defence of property. For the laws which allow force to be repelled with force do not

distinguish between person and property, but allow it in either case ; C. Vnde vi, l. i ; and ff. De vi et vi arm., l. i, § *vim vi* ; and ff. Ad legem Aquiliam, l. *scientiam*, § *qui cum aliter*. Opposed to this is the passage in Clemen., De homicidio, *si furiosus*, quoted above. For the text there speaks strictly of the killing or wounding of one who is himself a killer. And I think this view is true, for the following reason : For a man commits irregularity by killing or wounding, even without a guilty intention, as appears in the case of a judge ; dist. li, *qui in aliquo* ; even by killing accidentally, as is noted in dist. l, *de his* ; and De homicid., ch. *sicut dignum* ; and Ne cler. vel monach., ch. *sententiam* ; and De raptoribus, ch. *in archiepiscopatu*. Any one, therefore, who kills in any manner whatsoever, becomes "irregular," except in the cases excepted by law. So when the case of defence is excepted, the exception must be understood strictly and in a limited sense ; for the law makes an exception only when the law is anomalous, and so the exception is to be strictly understood ; Sext, De reg. iur., rule *quæ a iure*.

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*Whether a man incurs excommunication by laying hands on a clerk, in defence of his own property ?*

[Ch. cvii.]

The fourth question is, whether a man incurs excommunication by laying hands on a clerk in repelling force with force, in defence of his own property. It appears that he does, by xvii, q. iv, ch. *si quis suadente* ; and De sent. excommunicationis, ch. *nuper*, with the notes to that passage. This is confirmed. For he incurs the penalty of irregularity, as in the last question. Therefore he should incur this too, since both are spiritual penalties, and one incurs excommunication more easily than irregularity, as is obvious. Solution : Innocent, in De restit. spoliatorum, ch. *olim*, holds that one who repels force with force does not incur excommunication, provided that he cannot repel it otherwise than by laying hands on the assailant, and that he acts within the limits of justifiable defence. I think this opinion true ; and my reason is, that to incur excommunication by the violent laying of hands on a clerk, there must be present the persuasion of the devil, as is proved by the text of xvii, q. iv, ch. *si quis suadente diabolo*. And if you rightly examine the laws which inflict the penalty of excommunication on one who lays hands on another, you will not find that the laying of hands on a clerk in this case is one of the cases for which the laws declare this penalty. For the laws punish violence ; xvii, q. iv, ch. *si quis suadente*, already quoted ; and De sent. excom., throughout. This is not violence, but repelling violence. They punish recklessness ; De sent. excommunicationis, ch. *contingit*. This is not such ; indeed, by permission of a separate law, they punish it as if it were violence ; the same title, ch. *nuper*. This is an honourable and permitted act. They punish murder, as when instructions are given for a man to be smitten ; ch. *universitatis* ; and Sext,



the same title, ch. *cum quis*. They punish intention, as when one ratifies what was done in one's name ; ch. *cum quis*, above. They punish negligence ; the same title, ch. *quantæ*. Here none of these conditions is present.

The citations to the contrary are easily answered. The answer to the canon *si quis suadente* has been given above. As to what is said about irregularity, the reason of the difference is clear. For no one incurs excommunication without wrongful intention ; but one may incur irregularity, as to which see the penultimate gloss on Clem., *si furiosus*, often quoted above.

*Whether one may summon one's friends to help in the defence of  
one's property ?*

[Ch. cviii.]

The fifth question is, whether one may summon friends to repel violence done to one's property, and whether they may give help. The gloss on ff. De vi et de vi armata, l. iii, § *eum igitur*, notes that this is allowed, even when the violence is done to property. I think this is true ; and my reason is, that one may oppose an error, as the laws say, wherever it is possible to oppose it. Otherwise, one who does not oppose seems to consent to it ; dist. lxxxiii, *error*, and \* ch. *qui consentit*, with the following chapter. Therefore friends may help their neighbour in this, as I said above, because to do so proceeds from the root of charity ; De Pœnit., dist. ii, ch. *proximos*. And if this is allowed, the question is at once solved which might ask whether a man incurs excommunication by laying hands on a clerk, while defending the goods of a neighbour against violence. Because he does not incur it, since this is not one of the things which are punished by the canon, but rather permitted.

*Whether, in defending property, one may repel force with force against all  
those against whom one may use force in defending persons ?*

[Ch. cix.]

The sixth question is whether, in defending property, one may repel force with force against all those against whom one may use force in defending persons. Solution : One may do so, among persons capable of holding property ; I exclude slaves, monks, and the like. But I admit that the limits of defence ought to vary with the various quality of persons. For one should act differently and more gently against a father than against an absolute stranger ; and so with each relationship which comes up for consideration, all the circumstances are to be regarded, since these are not defined by law ; ff. De iure deliber., l. i, at the end ; and De offic. iud. delegati, ch. *de causis*.

\* Supply xi, q. iii.

*Whether one may repel force with force in defence of things deposited or lent ?*

[Ch. cx.]

The seventh question is, whether one may repel force with force in defence of things deposited and lent. And it seems that one may not, by C. Vnde vi, l. i, which speaks of things possessed, and rightly. But these things are not "possessed" by a borrower or deposittee; therefore he may not repel force with force in such cases. Solution: In these and the like cases we claim that a man may repel force with force; for the interdict "*vi bonorum raptorum*" is allowed to a deposittee or a borrower if such things are forcibly seized; ff. *Vi bonorum raptorum*, l. *prætor ait quæ est lex*, § *in hac actione*. Much more, then, is a right of defence allowed them; ff. *De reg. iuris*, rule *invitus*, § *cui damus*; and ff. *De fonte*, the single law; Sext, *De reg. iur.*, rule *qui ad agendum*; also because they are under a liability. Therefore, &c. C. Vnde vi, l. i, is not opposed to this, because although it uses the phrase "*in possessione*," yet it does not exclude other forms of "*detention*," for which the laws allow actions to the detainers, as above. Or we may say that the word "*possidere*" is to be taken in a wide sense, to include lawful detention; ff. *De rei vindic.*, l. *officium*; and the note on *De causa possessionis et proprietatis*, ch. *pastoralis*.

*How may this particular war be declared ?*

[Ch. cxi.]

We must consider the seventh principal question, which is, how force may be repelled with force.

*How may force be repelled with force within the limits of justifiable defence ?*

And the text answers this by saying that it is allowed within the limits of justifiable defence.

*What are the "limits of justifiable defence," and what is required therein ?*

But the meaning of these words is ambiguous; what are the conditions required for these limits? Doctors agree that they are those which equal the violence inflicted, in quality of arms, and in length of time. Also there must be equivalence in the violent act itself, lest, by exceeding, it be regarded as revenge; but this is a doubtful point.



*Whether a poor and feeble man may defend himself with a sword against a strong and vigorous man who strikes him only with the fist ?*

[Ch. cxii.]

And in the first place suppose a strong and vigorous man strikes me with his fist, and I am a poor fellow who cannot stand up to him with the fist. May I defend myself with a sword ? It seems that I may, because equality is always to be regarded ; C. De fruc. et lit. expen., the last law ; ff. De arbitr., l. *si cum dies* ; Sext, De reg. iuris, rule *in iudiciis*. On the other hand, if a man tries to rob me by violence, and I, being no match for him in strength of body, strike him with a sword, that would be compensation on a person for injury to property, which ought not to be ; C. De sacrosanct. ecclesiis, the last law.

Jacobus de Arena draws a distinction. One wishes to repel either violence to the person, or violence to property. In the first case I may use arms and any means whatsoever, if matters cannot otherwise be set right ; C. De appell., l. *si quis*. For if I may kill a thief when I do not recognize him, or when I cannot get a judge to help me as to the stolen goods ; ff. Ad legem Corneliam de sica., l. *furem* ; much more may I kill a man when that is the only way of saving my person. In the second case, of violence to property, either the violence done may be redressed by resorting to law, in which case I may not defend my property in any way I like, but only with certain arms, and not with acts, because I ought not to strike a person in defence of a thing, even when the thing cannot be saved in any other way, provided the wrong is capable of being redressed by law. But if it is not, then I may defend my property in any way whatsoever, even by killing the assailant ; ff. Ad legem Corneliam de sicariis, l. *furem*. And in this sense is understood C. Vnde vi, l. i ; and ff. De vi et vi arm., l. iii. § *eum igitur*. Understand, therefore, the phrase "the limits of justifiable defence" in this sense.

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*Assuming that a man may defend himself "incontinenti," in what sense is the phrase "incontinenti" to be understood ?*

[Ch. cxiii.]

The second question relates to the passage of time, because the texts say that it must be done "incontinenti." What does this phrase mean ? Some say that an act is done "incontinenti" if it is done while the offence is being actually committed, but if the injury has already been inflicted, then we ought to resort to a judge. Others say it is done "incontinenti" even if it is done afterwards, before one turns to other business ; ff. Ad leg. Iul. de adulteriis, l. *quod ait*, at the end. Jacobus and Petrus draw a distinction. Either we speak of violence to the person, and then we are said to repel it "incontinenti" if we do so during the actual commission of the act. In this sense is understood ff. Ad leg. Aquil., l. *scientiam*, § *qui cum aliter* ; De iustit. et iure, l. *ut vim*. Or we speak of violence to things, and then we are said to repel it "incontinenti"

even after the commission of the act, provided we do so before turning to other business ; ff. De vi et vi armata, l. *qui possessionem* ; and the same title, l. iii, § *eum igitur*. The reason of the distinction is, that injury to the person cannot afterwards be repaired, but a thing taken away can be recovered ; and so if one has not turned to other business, even if one seeks one's friends and returns to recover the thing, one is said to act "incontinenti," as is noted by the gloss on ff. De vi et vi armata, l. iii, § *eum igitur*, already quoted. Understand the limitation in the passage of time in this sense.

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*Of equivalence in the act of violence itself. How should the act be done ?*

[Ch. cxiv.]

The third question relates to limitation in the matter of equivalence in the violent act ; that is to say, it must be defensive, not vindictive. And although the subject is treated in various ways, it should be considered throughout in relation to the conditions of the persons.

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*Am I deemed to have acted vindictively, and not defensively, if I have expelled my despoiler from my possession, when, before I expelled him, he offered to give security for the restoration of possession ?*

[Ch. cxv.]

The fourth question is this : A man has expelled me from possession, and after the expulsion he is prepared to give security for its restoration, if it should appear that he has not acted lawfully ; but none the less I expel him ; am I deemed to have acted vindictively ? The gloss on C. Vnde vi, l. i, holds that I am ; but the gloss is generally disapproved. For one ought not to trust oneself to that weak security ; ff. Ad Treb., l. *quia poterat*, and l. *nam quod*, and similar passages.

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*Whether I ought to await one who is prepared to strike me, or to anticipate him ?*

[Ch. cxvi.]

The fifth question is whether, if I see a man prepared to strike me, I ought to wait for him to strike me, or to anticipate him. The gloss on l. i, quoted above, argues for and against, and determines that I ought not to wait for him. Petrus says that in interpreting the gloss we must distinguish between persons. For some are bold and ready to strike, and such persons are not to be waited for ; others are timid, and these are not at once to be anticipated ; and in this way he limits a clear gloss ; C. Si quis Imperatori maledixerit, l. i.

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*Whether a soldier attacked by his neighbour is deemed to repel force with force if he waits for him, and strikes him, although he might run away ?*

[Ch. cxvii.]

The sixth question is this : A good soldier is attacked by his neighbour, and might avoid him by running away ; but thinking shame of that, he waits for him, resists him, and strikes him ; is he deemed to repel force with force ? It appears that he is not, by ff. Ad leg. Aquiliam, l. *scientiam*, § *qui cum aliter*. Modern jurists hold the contrary, on the authority of ff. Ex quibus caus. maiores, l. *in eadem*. The section *qui cum aliter* is not inconsistent, because the man could not avoid him without injury to his own repute and honour, which are things that cannot be repaired by a judge ; ff. Si quis omissa causa testamenti, l. *Iulianus*.

*If a wounded man, after the wounds have been inflicted, pursues his assailant, and strikes him, should he be punished as "malicious," or as "culpable" ?*

[Ch. cxviii.]

The seventh question is this : A wounded man, after the wounds have been inflicted, pursues his assailant, and strikes him, which is not lawful ; ff. Ad leg. Aquiliam, l. *si ex plagis*, § i, and l. *qua actione*, § *si in colluctatione* ; is he to be punished as "malicious," or as "culpable" ? Some say as "culpable," because an unpremeditated heat does not involve "calumnia" ; ff. Ad S. C. Turpil., l. i, § *quæri* ; ff. Ad leg. Corn. de sica., l. iv, § *cum quidam* ; ff. De pœnis, l. *respiciendum*, § *delinquunt*. Others say as "malicious," since he ought not to have revenged himself. Jacobus de Arena says that the first view is more humane ; ff. De pœnis, l. *interpretatione* ; ff. De reg. iur., l. *in totum* ; and the second is stricter ; C. De iniur., l. *si non convicii*. I think the first is truer, even as a matter of law, on the authority of the laws first cited.

*Whether violence to the person may be repelled by friends ?*

[Ch. cxix.]

The eighth question is, whether violence to the person may be repelled by friends, like violence to things, as the gloss on § *eum igitur* notes. The gloss on C. Vnde vi, l. i, says not, on the authority of ff. De vi et de vi armata, l. *cum fundum*. Others draw a distinction. Either the friends were attendant on the person who suffered the violence, or they were not. In the first case it is lawful ; ff. De iniuriis, l. *item apud Labeonem*, § *si quis virgines*. In the second case it is not lawful. Jacobus de Arena holds that it is lawful in any case. For if others may help us in our affairs, as appears from ff. De neg. gest., l. i, much more may they help our person, which is preferred before

things ; C. De sacrosanct. ecclesiis, l. *sancimus*. The text of C. Ad legem Iuliam de adulteriis, l. *Gracchus*, seems to support this. The law *cum fundum* is not inconsistent, because there the mandate was given after an interval, which would not be lawful even for the principal. The text of l. *ut vim* is opposed to this view, when it says " for the protection of one's own person," and Clem., De homicidio, *si furiosus*.

*Whether a slave is excused, who kills his master's wife on the order of his master ?*

[Ch. cxx.]

The ninth question is this : Suppose a man orders a slave to kill his wife, whom he suspects of adultery, and threatens that otherwise he will kill the slave, and the slave kills her ; is he excused ? It seems that he is not. For one ought to bear all evils rather than consent to evil ; ff. Quod met. causa, l. *isti quidem*, at the end. This seems to be supported by ff. Ad leg. Aquiliam, l. *scientiam*, § *qui cum aliter*. To the contrary is ff. De iustit. et iure, l. *ut vim* ; for he did the act in defence of his own person. Therefore, &c. Jacobus of Ravenna draws a distinction. Either the woman would have perished in any case, or she would not ; ff. Ad leg. Aquil., l. *si quis fumo* ; and ff. Quod vi aut clam, l. *si alius*, § *est et alia*. Petrus holds that the slave is excused in any case, because he did it in defence of his own person ; l. *ut vim* ; also because charity begins with oneself ; C. De servitut. et aqua, l. *præses* ; also because it is lawful to redeem one's own life ; C. De transactionibus, l. *transigere*. I should think a distinction ought to be made. If the danger of his own death would inevitably befall the slave unless he killed the wife of his master, then I should think the opinion of Petrus true. If there should be some hope of his safety, even if he resisted his master, then I should be of the contrary opinion, on the authority of the laws above cited.

*What is the end of particular war ?*

[Ch. cxxi.]

As regards the last principal question, which is, What is the end of this war ? the solution of this question is clear from what has been said above. For the preservation of oneself and of one's property is the end of this war, and this is its final tendency, and the reason why it is allowed, as clearly appears from the arguments above.



*The fifth treatise of the third principal part, treating of particular war which is waged in defence of the mystical body, and called Reprisals.*

[Ch. cxxii.]

*Whence and in what have Reprisals their origin, and why were they introduced ?*

[Ch. cxxiii.]

As I shall deal in some detail with the question and matter of reprisals, I will first set forth the foundation upon which the introduction of reprisals rests. Having done so, I will examine causes which need examination.

Now the Most High Creator in the beginning created the heaven and the earth, and the things which are in them, and angelic and human nature, spiritual things and temporal things, and ruled them in His own person ; and to man, whom He created, He gave precepts, and on the transgressor He imposed a penalty ; Genesis, ch. ii. And how He ruled them in His own person is apparent, for He punished offences Himself, and not by a minister. For He punished Cain, Lamech, and certain other princes, as we read in Genesis, chs. iv and v. And this government of the world proceeded down to the times of Noah. But from the time of Noah He began to rule the world by ministers, of whom the first was Noah ; and that Noah was the ruler of the people is clear. For the Lord committed to him the government and administration of the Ark ; Genesis, chs. v and vi. And by the Ark is signified the Church. And we read in Genesis, ch. ix, how the Lord committed the government to Noah and to his sons ; and although Noah was not a priest, yet we read that he exercised the office of priesthood, before laws were given to the people ; Genesis, ch. viii. But in this government and vicariate succeeded Patriarchs, Kings, and Judges, who were for a time rulers over the people of the Jews. And that government lasted to the time of Christ, Who was our natural Lord and King, of Whom we read in the Psalm, " O God, give thy judgement to the king." But Christ Himself put two lights on the earth—a greater light for the day, which is the supreme Pontiff, and a lesser light for the night, which is the Emperor of the Romans, to whom He committed the administration and government of the world, to the one in spiritual matters, and to the other in temporal. In the early time, when the Lord governed in His own person, there was no need of reprisals, since justice was administered by the Lord. In the time of Noah and his successors in the government of the people of the Jews, there was no need of reprisals, since justice was administered by ministers, and subjects among the people recognized a superior whom they obeyed. In the early days of the supreme Pontiffs and the Roman Emperors, when all were in subjection both in law and in fact, there was no need of reprisals, since the complement of justice was administered by princes, with observance of the due order of law. But when the Empire began gradually to be exhausted, so that now there are some who in fact recognize no superior, and by them justice is neglected, the need arose for a subsidiary remedy, when the ordinary remedies fail, but which

is on no account to be resorted to when they exist ; ff. De minor., l. *in causæ* ; ff. De oper. nov. nunci., l. *in provinciali*. But this extraordinary remedy had its origin in the law of nations. For it is a form of lawful war. For it is lawful to take arms in defence of one's own body ; ff. De iustit. et iure, l. *ut vim* ; C. Vnde vi, l. i ; De restitut. spoliati., ch. *olim* ; and not only in defence of one's private and individual body, but also of the mystical body. For a community is one body, whose parts are the several members of the community ; ff. Quod cuiuscunque universit., l. i ; and so a community may defend the parts of its own body. It had its origin, too, in divine law, as we read in xxiii, q. ii, ch. *Dominus Noster*. From all that has been said, we may infer the reason of the introduction of this remedy. For its final object is that justice may obtain its due effect, and its occasion is when there is a failure of remedy, arising from the neglect of those who govern and rule peoples, and the absence of recognition of superiors in fact, at which time this extraordinary remedy is needed. From this we infer that even to-day this remedy rarely claims a place. For if the secular judge neglects his office, recourse is to be had to the ecclesiastical ; De foro competenti, *ex tenore*, and ch. *licet*, and ch. *ex parte* ; Qui filii sint legitimi, *per venerabilem* ; although he also is in fact ill obeyed. After this preface, it remains to examine what are the causes of reprisals, as follows.

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*Of the causes of reprisals.*

[Ch. cxxiv.]

What is the efficient cause ? the formal cause ? the final cause ? We must also consider certain questions arising on this subject.

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*Of the efficient, or productive, cause of reprisals.*

The first question, What is the productive cause ? is the same thing as asking who may declare reprisals. Here we must observe that, as was said above, no positive law, canon or civil, ordains that reprisals should be declared. For both laws ordain a mode of obtaining the effects of justice. It is even forbidden to seize one's own property ; C. Vnde vi, l. *si quis in tantam* ; and ff. Quod met. causa, l. *exstat*. Moreover, they are even expressly forbidden by civil and canon law ; Authent., Vt pign. non fiant ; and Sext, De iniur., the single chapter. But when the remedies of positive law fail, it has been necessary to resort to this device of a declaration of war, lest justice should perish. But this declaration of war belongs only to one who has no superior ; ff. De captivis, l. *hostes*. For one who has a superior cannot violate the remedies of law on his own authority. Therefore only one who has no superior, both in law and in fact, may declare reprisals. Also he against whom they are declared should



have no superior, or, if he has, that superior should neglect to do justice. From which some people infer that the magistrate of a state which recognizes no superior in fact, cannot declare reprisals unless he is specially empowered to do so, but that recourse should be had to the community, with whom the full sovereignty resides, and they should be declared on its authority. I do not think this is true where a community has transferred all power to a ruler ; for then he can do anything that the community can do, as we say where the ruler has general and unlimited power ; ff. De procuratoribus, l. *procurator qui*. Otherwise, if the power transferred is limited. They also argue that if a count, margrave, or the like is subject to the Emperor, reprisals cannot be declared without the Emperor's authority, arguing from the rule mentioned above in De restit. spoliatorum, ch. *olim*. And this holds if we speak of common law. For if we speak according to the disposition of municipal laws, according to which the right of declaring reprisals is allowed, we must say that those persons may declare them to whom a municipal law grants the right. And they are granted, as I said, on the ground of urgent necessity, just as sometimes the civil law, on the ground of necessity, grants a man the right to take the law into his own hands ; ff. Quæ in fraudem cred., l. *ait prætor*, § *si debitorem* ; ff. Quod vi aut clam, l. *alius*, § *bellissime*. From what has been said, we may infer by what law a declaration of reprisals is obtained. For as "condictions" are granted by force of a statute, so this privilege is obtained from a law ; ff. De conduct, ex lege, the single law. But if we refer to the disposition of the common law, some say that neither the action nor the office is intended. Their reason is, that this power is granted only by the law of nations, and that by that law all things were directed by the power of a king ; ff. De orig. iuris, l. ii, at the beginning. So they say that to-day the hand of a king is required, according to the divine statutes and by the law of nations. I do not think this is true. I admit that there is no power unless the traditional form is observed. For recourse must first be had to the ordinary remedies, and only if they fail, to this remedy ; and this should be ascertained by a judge who is asked to declare reprisals ; and if the person against whom they are claimed appears after notice given, he is heard for the defence, as will be shown below, and judgement follows, either awarding or refusing the declaration. Fourthly, the action or the office was necessary, for the form of the judgement ought to follow the mode of petition ; ff. Communi divid., l. *ut fundum* ; and De simonia, ch. *licet Heli*. This is confirmed. For although this power proceeded from the law of nations, yet it has been approved by the civil law, by implication, though not by express words. For the civil law implies, or rather it expressly declares, that rebels and those who disobey the law may be proceeded against by military force ; ff. De rei vindicatione, l. *qui restituere*. And so it has provided a remedy by way of request to a magistrate to allow recourse to be had to this military force, when the appropriate remedies fail.

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*Of the material cause of reprisals.*

[Ch. cxxv.]

It remains to examine the material cause. As to the material cause, then, we must consider the "matter in which," the "matter about which," the "matter against which," or the object, and the "matter from which."

*What is the "matter in which"?*

The "matter in which" is the person or subject to whom this power is granted.

*What is the "matter about which"?*

The "matter about which" is the things about which this power is granted.

*What is the "matter against which"?*

The "matter against which," or the object, is that against which it is granted, as, for instance, a state, or other community.

*What is the "matter from which"?*

The "matter from which" is the cause from which the power is granted.

Returning to the examination, I ask to whom this power of taking reprisals is granted. Solution: It is granted to citizens for the reason given above. For citizens are a part of the mystical body, that is, of the state; ff. *Quod cuiusunque universitatis*, l. i. Hence the state is called "civitas," as being a unity of "cives," as is noted in Sext, *De sent. excom.*, ch. *si civitas*. And, as was shown above, any man is allowed to defend his own body; ff. *De iustit. et iure*, l. *ut vim*; and C. *Vnde vi*, l. i. And this is true alike of the mystical and of the individual body. As to this questions arise.

*Are reprisals to be granted to residents?*

And the first question is, whether they ought to be granted to residents. Some authorities draw a distinction here, and say that if the residents bear the burdens of the state, then reprisals ought to be granted to them; if they do not, then they ought not to be granted. The reason of the second statement is, that one who does not share a burden ought not to share a benefit either; C. *De furtis*, l. *manifestissimi*, § *sed cum in secundam*; ff. *De regul. iuris*, rule *secundum naturam*; and Sext, rule *qui sentit*. It is supported by C. [De episc.



et clericis] De collegiatis, book xi, l. *qui sub prætextu*; and ff. [C.] De collegiis [book xii, l. i], *collegia si quæ fuerint illicita*. It is further supported by the rule that a man does not enjoy the privileges of an office, unless he has in fact held it; C. book xii, De consulibus, l. *nemini*; [C.] ff. De excusat. [tut.], l. *sed et milites*, § *quæsitum*; ff. De testam. mil., the penultimate law. I do not think this opinion true without qualification, but I think a distinction must be made as follows. Either a resident bears no burdens by reason of his contumacy, because, although called upon, he will not bear them, as he is bound to do. For between a state which admits a man to reside and the resident, there arises an implied contract, binding on both sides, whereby the resident is bound to bear burdens; ff. Ad municip., l. i, and l. *incola*; and the state is bound to protect him; ff. De offic. præsidis, l. *illicitas*, § *ne potentiores*. And in this case, if he refuses to fulfil the contract on his side, the state, for its part, is not bound to defend him, nor can he demand that it should; ff. De act. empti, l. *Iulianus*, § *offerri*. Or, again, the resident bears no burdens because the state, which was able to remit the burden, has conferred this privilege on him; C. De pactis, l. *si quis in conscribendo*; and De episcop. et cleric., *vel a Principe*. And then reprisals ought to be granted to the resident, for privileges granted in his favour should not result in injury to him; C. De legibus, l. *quod favore*; Sext, rule *quod ob gratiam*. And you must understand this to refer to a privileged person after the assumption of his privileges.

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*Whether reprisals should be declared for citizens who are not subject to the jurisdiction of a state, and are otherwise not part of it?*

[Ch. cxxvi.]

The second question is, whether reprisals should be declared for citizens who are not subject to the jurisdiction of a state, and are otherwise not part of it. Some authorities draw a distinction. If they are excepted from the jurisdiction by privilege, like clerks; Authent., l. ii; C. De episcop. et cleric., *statuimus*; or because of secular rank; C. Vbi senat. vel clarissimi, l. ii; ff. De vacat. mun., throughout; reprisals should be granted them. If they are not subject by reason of their own contumacy, then reprisals should not be granted. The reason of the first statement is, that a privilege introduced in their favour should not result in injury to them, and because among citizens an obligation is formed at birth between the citizen and the state, which cannot be changed; ff. Ad municip., l. *assumptio*. Otherwise with a mere resident, because in his case an obligation is formed only by his admission; ff. Ad municipalem, l. i. The reason of the second statement is their own contumacy; ff. Ex quibus cau. maior., l. *sed etsi per prætorem*, § *sed si dum*.

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*Whether reprisals should be granted to a citizen "by convention" against the state of his origin?*

[Ch. cxxvii.]

The third question is, whether reprisals should be granted to a citizen "by convention" against the state of his origin. It appears that they should not; for where I claim a right from some fact, I am not under a liability if I acquire the right; ff. De usufruct. legato, l. *sed et si quis*, § *et regulariter*. But if an injury is done to this citizen, the state of his origin acquires a right of declaring reprisals; therefore reprisals cannot be declared against it. This view is confirmed by the rule that the state of origin is preferred; ff. Ad municipalem, l. *assumptio*. Also by the consideration that the state of origin might have legislated for its own subject, before he became a citizen of the other state by convention, and his state by convention cannot complain. It is confirmed by the analogy of the usufructuary, who may make an "operis novi nuntiatio" to all except the owner; ff. De oper. nov. nuntiatione, l. i, at the end. It is confirmed by a further analogy. For one who has the Publician action may use it against all except the owner; ff. De Publiciana, the last law. The text of ff. Ad municipalem, l. *de iure*, supports this. For the relations between a citizen and a state should be put in suit only before a judge of that state. This is confirmed. For reprisals are an extraordinary remedy, as I showed above; but extraordinary remedies are not given to a son against a father; C. Qui et advers. quos, the last law. But the power of a state over a citizen is greater than that of a father over a son; ff. De iustit. et iure, l. ii; and ff. De captivis, l. *postliminium*, § *filius*; ff. De castrensi peculio.

The contrary view is supported by the consideration that if two have the same subject, each may defend him against injury inflicted by the other. For a state punishes a father who offends against his son; ff. De patri., throughout. This is confirmed thus: For if two have rights over a thing, although one right may be weaker than the other, yet the man who has the weaker right may bring an action against the man who has the stronger, if he injures the thing in which those two rights meet; ff. Ad leg. Aquil., l. *item Mela*, the last section; and the same title, l. *si dominus servum*. It is confirmed thus: For if two men are owners of the same slave, and one does him a wrong, he may be restrained by the other; ff. Ad leg. Aquil., l. i. It is confirmed thus: For, to repel an injury, friends may be summoned; ff. De vi et de vi armat., l. iii, § *cum igitur*; and De homicid., *significasti*; Sext., De sent. excom., *dilecto*. Solution: Some authorities say without qualification that reprisals may be declared, their reason being that the power of declaring reprisals takes the place of defective jurisdiction. But if a state injures a citizen, he may appeal to a superior; ff. Quod met. causa, l. *metum*, § *animadvertendum*. Therefore, when jurisdiction fails, there is a place for reprisals. This is supported by ff. De dolo, l. *sed si ex dolo*. It is confirmed thus: For any power is deemed to be legitimate, when it is rightly used, but not when it is used for spoliation; ff. Pro emptore, l.



*ei qui fundum, § si tutor* ; ff. De furt., l. *interdum*, § *qui tutelam* ; and so they say the citations on one side and on the other hold. I do not think this conclusion is true in this unqualified form ; but I think we must distinguish between cases where the injury inflicted by the state of origin arises from some act prior to the convention, whereby the man became a citizen of the other state, and cases where it arises from something done afterwards. In the first case, reprisals may not be granted by the state of convention. For the man ought to be a part of the body to be defended, at the time when he suffers the injustice. For this right does not pass to the new state ; ff. De servo corrupto, l. *doli*, the last section ; ff. Depositi, l. i, § *si servus* ; and ff. De oblig. et actionibus, l. *quæcunque*. From which I infer that reprisals ought not to be granted to one who becomes a citizen by convention after the injustice is committed. In the second case, the solution above given holds.

*Whether reprisals should be granted to citizens, and to those who are regarded as citizens, but whose citizenship is limited ?*

[Ch. cxxviii.]

The fourth question concerns citizens and those who are regarded as citizens, but whose citizenship is limited. As to the power of a state to determine who is a citizen, see C. De incolis, l. *cives*. Even mercenaries are included, when they earn pay ; ff. Ad municipalem, l. *municipes*, the last section. Also students, to the extent that they receive protection from the rulers of states ; ff. De pecunia constituta, i ; and Authent., *habita*, C. Ne fil. pro patre. Are reprisals to be granted to such persons ? Some say that limited reprisals should be granted on their behalf, and in those matters in which they are regarded as citizens, as where an injury is done to a student in matters regarding his studies, and to a soldier in matters regarding his service ; but not in other matters, since in other matters they are not regarded as members of the body.

*Whether a state may grant reprisals to the citizens of another state, who by agreement or statute are treated as its own citizens ?*

[Ch. cxxix.]

The fifth question is whether, if by agreement or statute the citizens of one state ought to be treated as citizens of another, reprisals should be granted to them by the state in which they ought to be so treated. Solution : The words of the agreement and statute are to be weighed. For those words say they are to be treated as citizens ; they do not make them citizens ; ff. De verb. significat., l. . . . *appellatione* ; and the note there by Jacobus de Arena should be observed. Those words, then, are understood as meaning that they are treated as citizens in matters belonging to the common law ; ff. Pro emptore,

l. *ei qui fundum*, § *si tutor*. This is one solution. I do not accept this conclusion, and I even believe that reprisals should be declared for them. For I admit that those words do not make a man a citizen, but they give him a right to all that the citizen has a right to. For this is proved by the words, which ought not to be departed from, nor deprived of their proper meaning ; ff. *Qui et a quibus*, l. *prospexit* ; ff. *De leg.*, iii, l. *non aliter* ; and ff. *De exercitoria*, l. i, § *is qui navem*. Hence, there should be granted to him all that is granted to a citizen ; but reprisals are granted to a citizen, as I showed above. Therefore, &c. Nor is this inconsistent with saying that there should be granted to him all that belongs to a man by the common law ; for this remedy, if the due formalities are observed, is not forbidden by the common law.

*Of the "matter about which."*

[Ch. cxxx.]

It remains to consider the "matter about which" they are granted, which is property ; and this is clear. For they affect the property, movable and immovable, of those against whom they are granted, which is found in the territory of the state which grants them. But in regard to this many questions may be raised.

*Whether reprisals can be declared against the property of those whose persons cannot be seized on the strength of reprisals ?*

And firstly, can reprisals be declared against the property of those whose persons cannot be seized on the strength of reprisals ? Solution : If they are persons who cannot be seized on account of some difficulty caused by reason of age, or madness, or the like, then reprisals can be executed against their property ; ff. *De in ius vocando*, l. *satisque* ; Authent., *Vt nulli iudicium*, § *necessarium*. But if they cannot be executed against the persons because of some privilege allowed them by law, as in the case of students and ambassadors, then the reprisals cannot be executed on the property necessary for their studies or embassy, which they bring with them, but on their other property they may ; ff. *De publican.*, l. *si publicanus*. This also affords a solution of a third question : If an ambassador or a student brings with him property belonging to others, can reprisals be executed against this ? We must say that they cannot, if the things are necessary to them, as horses and the like ; ff. *De verb. significatione*, l. *ensoria* ; otherwise they can.



*Whether a simple declaration of reprisals may be executed against property existing in the territory of the state against which the reprisals are declared, so that it may be seized and brought into the territory of the state declaring them ?*

[Ch. cxxxi.]

The second question is, whether a simple declaration of reprisals may be executed against property existing in the territory of the state against which the reprisals are declared, so that it may be seized and brought into the territory of the state declaring them. Some say it may not, because the property is "outside the territory"; ff. De iurisdictione [omn. iud.], l. *extra territorium*; and ff. De rebus auctor. iudic. possidend., l. *cum unus*, § *is cuius*; and Sext. De constit., ch. ii. Moreover, to enter the territory of others is allowed to be a cause of greater disturbance. Therefore, as the point is doubtful, it does not seem to be allowed; ff. De reg. iuris, l. *non est singulis*. I cannot accept this conclusion; for resort is had to the royal authority on account of a failure of jurisdiction, because the formula of a solemn judgement has failed; and accordingly this may be done anywhere, because a man may anywhere defend his own body; ff. De iustit. et iure, l. *ut vim*; and C. Vnde vi, l. i. Also, in a simple and general grant the words ought to operate generally according to their tenor; ff. De leg. præstan., l. i, § *generaliter*; also the result might be that reprisals would have no effect, as when they are used against a distant state, whose citizens have no property in, and do not come to, the state declaring them. Hence the declaration must be understood in a sense in which it may have its effect in any event; ff. De legat., i, l. *si quando*; ff. De reb. dub., l. *quotiens*; De reg. iur., l. *quotiens*.

*Whether, if one state declares reprisals against another, the ruler of the state declaring them, after writing to the ruler of the other, may execute the reprisals against property situated there ?*

[Ch. cxxxii.]

The third question is whether, if one state declares reprisals against another, the ruler of the state declaring them may, after writing to the ruler of the other state, execute the reprisals against property there situated. Some authorities say that, although this may be done in execution of a judgement; see ff. De re iudicata, l. *a divo Pio*, § i; and De rebus auct. iudic. poss., l. *cum unus*, § i; yet in this case it may not. And their reason is this: For a declaration of reprisals is a form of particular war, to which no one can compel another unless he is a subject: Vsus Feudorum, Hic finitur lex Conradi, ch. *domino*. I do not believe that this is the correct meaning. For it supposes that in the execution of a judgement the judge who gives the judgement can compel another judge, even one who is not a subject, to execute it, which is false, because equal has no power over equal; ff. De arbi., l. *nam magistratus*; ff.

Ad S. C. Trebellianum, l. *ille a quo*, § *tempestivum*; De elect., ch. *innotuit*. None the less, the other does wrong if he does not execute it, so that he may be proceeded against before his superior on that account; for as long as justice can obtain its effect by observing due process of law, the rules of law should not be broken. Hence, in neither case is there a question of compulsion, but in each case the other will act rightly if he executes the judgement: because, just as when there is no failure of jurisdiction he ought to execute a judgement on request, so, when there is a failure of jurisdiction, and reprisals are resorted to, he ought to assist, though he cannot be compelled. But in federated states, as to which see ff. De captivis, l. *non dubito*, this is clearly admitted.

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*Of the "matter against which."*

[Ch. cxxxiii.]

It remains to consider the "matter against which" reprisals may be executed, which is properly called the subject, as to which many questions arise.

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*Whether reprisals, declared by one state against the men of another, may be executed against residents of that state?*

And the first question is whether, if the state of Milan has declared reprisals against the Bolognese, or the men of Bologna, the reprisals may be executed against residents in the state of Bologna. Solution: The words "Bolognese" and "men of Bologna" have the same meaning; ff. De excus. tut., l. *sed reprobari*, § *amplius*, and the gloss there. But the word "Bolognese" means the burgesses; ff. Ad municipalem, l. i; and the word "burgess" is the genus of "citizen" and "resident," as is noted in C. De incolis, l. *cives*. This is supported by the text of ff. Ad municipalem, l. *fili*, § *municeps*. Therefore, arguing from the first to the last, it follows from the nature of the words, that reprisals may be executed against the residents. And this is true, when residents bear the burdens of the state; Ad municipalem, l. i. Otherwise, if they do not.

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*The same subject continued; whether, if one state has declared reprisals against the men of another state, they can be executed against men of that state living elsewhere?*

[Ch. cxxxiv.]

The second question, which continues the same subject, is whether, if, for instance, the state of Milan has declared reprisals against the men of Bologna or against the Bolognese, they can be executed against Bolognese living elsewhere. Some authorities say they can, because the place of origin



is not changed ; ff. Ad municipalem, l. *assumptio*. Others make a distinction according to whether the reprisals are declared against the men of a province ; and then, they say, they cannot be executed against those who live elsewhere, because they are not considered to belong to the province ; ff. De verbor. signific., l. *provinciales* ; or against the men of a single state ; and then the first view prevails. A third party make a distinction according to whether the persons are living elsewhere, but within the same province ; and then, they say, the reprisals may be executed against them ; or in another province ; and then they may not. They rely on the reasons noted in the gloss on C. De adoptionibus, l. *in adoptionem*. A fourth party say that according to the proper meaning of the word, those who live elsewhere are regarded as Bolognese ; but according to the common use of speaking, they are not, and the common use prevails ; ff. De legat., iii, l. *librorum*, § *quod tamen Cassius* ; and so reprisals cannot be executed against them. Others say they can be executed against Bolognese who live elsewhere, but who are subject to the burdens of Bologna. But if they are not subject, then otherwise ; ff. Ad municipalem, l. i ; ff. De excusat. tut., l. *si duas*, § *sed et reprobari*, § *amplius* ; and C. De agric. et censitis, l. *cum scimus*, at the end.

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*Whether reprisals can be executed against the citizens or residents of a state, who are subject to its burdens, but are also citizens of another state ?*

[Ch. cxxxv.]

The third question is, whether reprisals can be executed against citizens or residents of Bologna, who are subject to the burdens of Bologna, but who are also citizens of Milan. It seems that they can be executed against them. For if a state can declare reprisals against one who is not its subject, much more may it declare them against a subject. This is confirmed. For an owner may claim that a usufructuary should forfeit his right of use on account of his misconduct, and conversely ; ff. De damno infecto, l. *si proprietarius*, and l. *hoc amplius*, § *si cum*, and the following section. Similarly then here, where two states claim jurisdiction over the same citizen. Some hold the contrary opinion without qualification. Their reason is, that this right takes the place of defective jurisdiction. But a state can well exercise jurisdiction over its own citizen ; therefore he will not be subjected to reprisals ; ff. Si quis test. lib. esse iussus, l. i, § *utique*<sup>(?)</sup>. Moreover, a state is bound to defend its own citizen ; therefore reprisals, if declared, will not constrain him ; ff. De evictionibus, l. *vindicantem*. Moreover, if a Milanese were to be constrained, then the state making the grant of reprisals would appear to be acting against itself, contrary to ff. De iur.isci, l. *in fraudem*, § *neque*. This conclusion I cannot accept without qualification. Nay, if a state cannot in fact constrain its own citizen, who is also a citizen of the state against which reprisals are declared, they will most properly be executed against him ; for they are declared because of a failure of jurisdiction, as has often been said above. But as a matter of law,

jurisdiction ought not to fail, since in law all are subject to the emperor ; ff. Ad leg. Rhod. de iact., l. *deprecatio* ; ix, q. iii, ch. *cuncta per mundum*, and ch. *per principalem*. But in fact it fails, because in fact men do not recognize him. Therefore, just as in fact jurisdiction may fail when a non-subject does a wrong, so, too, one who in law is a subject may resist in fact, and so resort may be had to the extraordinary remedy. I admit, however, that they will not constrain a subject until he has been specially proceeded against by due process of law, and the process is ineffective because of his actual rebellion.

*Whether reprisals can be executed against [soldiers] women ?*

[Ch. cxxxvi.]

The fourth question is, whether they can be executed against the [soldiers] women of Bologna ? It appears that they can, for the doctrine of postliminium applies to them ; C. De [captivis] postliminio reversis, l. i. The contrary is true, for they cannot be seized in person ; C. De offic. eius qui vicem alic. iud. obtinet, Authent., *sed hodie* ; and C. De execut. rei iudicatæ, Authent., *sed novo iure*. And that power, allowed by the law of nations, ought to be understood according to the civil law ; ff. De servit., l. *si cui*.

*Whether reprisals can be executed against clerks and others, even married clerks ?*

[Ch. cxxxvii.]

The fifth question is, whether they can be executed against Bolognese clerks ? The text says not, in Sext, De iniur., the single chapter. What about married clerks ? As to them we must follow Sext, De iniur., the single chapter.

*Whether, when a bishop neglects to do justice on his clerks, and recourse cannot be had to his superior, because the bishop is schismatic, reprisals can be declared against the same clerks by a secular judge ?*

The sixth question is whether, if a bishop neglects to do justice on his clerks, and recourse cannot be had to his superior, because the bishop is schismatic, reprisals can be declared against the clerks by a secular judge. Some authorities are doubtful on this point. We need have no doubt, because the laity have been granted no power over a clerk, however delinquent ; De sent. excom., ch. *contingit*, and ch. *in audientia* ; and Sext, the same title, ch. *si iudex laicus*. They may therefore be coerced by their superior, and recourse may be had to a secular judge by way of invocation ; De offic. iud. ord., ch. i ; xxiii, q. v, *regum*, and ch. *administratores*, and ch. *principes*.



*Whether reprisals can be executed against Bolognese students, or other students of Bologna, on their way to Padua for study ?*

[Ch. cxxxviii.]

The seventh question is, whether they may be executed against Bolognese going to Padua for study, or even against students of Bologna. The text says not, in Authent., Ne fil. pro patre, ch. *habita*; and this applies if they study law in privileged places, by the privilege of the university, but not if they study law in other places; ff. In proœmio, § *hæc autem tria*. But in other faculties the instruction may be given anywhere; ff. De excusationibus, l. *si duas*, § *cum autem*. And what has been said of students, applies also to writers, and bedels, and others who go for the sake of the students. This is proved by ff. De milit. testam. militis, l. i; and De bon. poss. ex testam. militis, the single law. It also applies to a father and other relatives going to see a son and relative in the university; ff. De iudiciis, l. ii, § *item*, in the gloss on the word "venerit."

*Whether reprisals can be declared against ambassadors ?*

[Ch. cxxxix.]

The eighth question is, whether they may be executed against Bolognese ambassadors. Solution: They may not; De legation., the last law; ff. De iudic., l. ii, § *legatis*; and note C. De iuris. omn. iud. et de foro competenti, the last chapter.

*Whether reprisals can be executed against those who are going to a festival, to the Church of St. James, or to other place of indulgence; also whether they can be executed against those at sea, and against those who cannot be summoned into court, and in many other cases ?*

[Ch. cxl.]

The ninth question is, whether they may be executed against Bolognese on their way to a festival. The text in C. De nundinis, the single law, says not. Can they be executed against Bolognese on their way to St. James' or on another pilgrimage? I answer, no; De cleri. pereгри., throughout; xxiii, q. iii, *si quis Romipetas*; C. Communia de success., Authent., *omnes*; there fully. The rule is the same for those going to a place of indulgence, because of the hospitality and the like which should be shown to persons going for an indulgence. Can they be executed against persons sailing to Bologna, who are carried by the wind to the state declaring them? I answer, no; Authent., *navigia*, C. De furtis. To the same effect, C. book xi, De naufragiis, l. i. Or can they be executed against those who cannot be summoned into court, who are enumerated in ff. De in ius vocando, l. ii? I answer, no. The reason is, that if they should be condemned, they could not be seized; much less could

this be done for the wrong or debt of another. From which it follows that if a Bolognese were appointed to an office at Milan, he could not be detained there on the strength of reprisals. So, too, if a Bolognese were to go to the city of Milan for the funeral of a relative. So, too, in similar cases which are enumerated in ff. De in ius vocando, l. ii, already quoted.

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*Whether reprisals can be granted against a Bolognese magistrate of Milan,  
who does injustice there ?*

[Ch. cxli.]

The tenth question is, whether reprisals may be granted against a Bolognese magistrate of Milan, who does injustice there. Jacobus de Belvisio, on Authent., Vt non fiant pignor., holds that they may, on the authority of ff. Quod quisque iuris, l. i. Others draw a distinction. The injustice done may be one for which he cannot be sued during his office, or he may be a magistrate who cannot be sued ; ff. De iudic., l. *pars literarum* ; ff. De iniuriis, l. *nec magistratus* ; and then they cannot be declared. But when his office is finished, they can be declared, if leave has first been asked of the syndic ; nor ought resort to be had to a judge of his own state, because he ought not to be sued there for an act of this kind ; C. Vbi de ratiociniis agi oportet, l. i, and l. ii ; and C. Vt omnes tam civil. quam militares, l. i ; and in Authent., Vt iudi. sine quoque suff., § *necessitatem*. But if he is a person who can be sued, then reprisals may be declared. I do not accept the second part of this solution, for reprisals are declared to supply a failure of jurisdiction. If, therefore, he can be sued during his office, and in the place of the offence ; C. Vbi de ratiociniis, l. ii ; and Vt omnes tam civil. quam militares, l. i ; why are reprisals necessary ? Nor do I accept the first part, where it says that reprisals may be declared when the office is finished ; for when the office is finished, he may be sued, and the form of law observed. Hence this remedy is not necessary. I admit, however, that in either case, where there is no legal means of coercing him, recourse might be had to reprisals ; and then it would not be necessary to resort to a judge of his own city, because such a judge has no jurisdiction in the case by the laws above cited.

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*Whether reprisals can be declared against the officials of a magistrate or  
ruler who does injustice ?*

[Ch. cxlii.]

The eleventh question is, whether reprisals may be declared against the officials of a magistrate or ruler who does injustice. Jacobus de Belvisio holds that they may. Others say that this is true where the officials have expressly taken an oath to the ruler to commit the act of injustice ; C. De advoc. diver. iud., l. *per hanc* ; C. book x, De excus. milit., the penultimate law <sup>(?)</sup>. But if



the officials have expressly opposed it, reprisals cannot be declared against them ; De appellationibus, l. *quoniam*. But if they neither consent nor oppose, because of absence or ignorance, then, too, reprisals cannot be declared ; ff. De magistr. conveniendis, l. i, at the beginning. But if they are present, and neither consent nor oppose, then, if they are officials appointed to a mere office, who are not called to the counsels of the ruler—such as notaries, and associates, and accountants—then, too, reprisals may not be declared against them ; ff. De magistr. conveniendis, l. i. And the reason is because they cannot oppose ; C. Vt omnes tam civil. quam militares, l. i, § *officium*. But if they are officials admitted to counsel, reprisals may be declared against them.

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*Whether reprisals can be declared against the consuls and the leaders of a state, who refuse to do justice ?*

[Ch. cxliii.]

The twelfth question is, whether they can be declared against the leaders and consuls of a state, who refuse to do justice. Jacobus de Belvisio says that they may. Others say that this is true only when such persons are present, but not if they are absent, because reprisals cannot be declared against them in their capacity of consuls ; ff. De magistr. conveniendis, l. i, at the beginning.

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*Whether reprisals can be declared against private persons, who are absolutely innocent, because of an offence of their lord, or of another private person, for which justice is not done ?*

[Ch. cxliv.]

The thirteenth question is, whether they can be declared against private persons, who are absolutely innocent, because of an offence of their lord, or of another private person, for which justice is not done. Jacobus de Belvisio says not, because a man ought not to be punished for another's offence ; Sext, De reg. iuris, rule *non debet*. Others take the opposite view, on the authority of xxiii, q. ii, ch. *dominus*. For individuals, even though innocent, are punished by a sentence of interdict ; Sext, De sent. excom., ch. *si sententia*. Also, in a lawful war innocent persons are made prisoners, but reprisals are a kind of particular war ; also, although a prisoner may be innocent, yet the state has jurisdiction over him ; and this seems to be the rule.

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*Whether reprisals can be declared against persons who are partially, but not fully, subject to a state ?*

[Ch. cxlv.]

The fourteenth question is, whether reprisals can be declared against persons partially, but not fully, subject to the state of Bologna. Solution :

If the states or communities are merely dependent on the state of Bologna, but have certain exceptions or jurisdictions by agreement, reprisals cannot be declared against them, because states which are free, and have merely submitted themselves in certain respects, are not subject. And reprisals will not be declared against them because of the offence of the lord who has them in subjection, because they are free; ff. De captivis, l. *non dubito*; but reprisals can be declared for an offence by these states, just as war, too, may lawfully be made against them.

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*Whether reprisals can be declared against a certain class of persons,  
who refuse to do justice?*

[Ch. cxlvi.]

The fifteenth question is, whether reprisals can be declared against a certain class of persons, who refuse to do justice. And we must say that they can, if the due form is observed.

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*Of the "matter from which."*

[Ch. cxlvii.]

It remains to consider the material cause from which reprisals arise. And it is a failure of jurisdiction. For in the first instance a judge ought to be applied to; and if he neglects to deal with the matter, and recourse cannot be had to a superior, then reprisals may be granted. But as to this many questions may be asked.

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*Whether a judge ought to be required to do justice, before reprisals  
are granted?*

[Ch. cxlviii.]

And the first question is, Who ought to require a judge to do justice? Solution: The party who has suffered the injury; and if the judge neglects to give redress, he ought to apply to the ruler of his own state, and make oath of his requisition and the judge's neglect, and ask the ruler again to require the judge to do justice; and then, if he neglects, reprisals may be declared. But that a requisition from the party is required, appears in Authent., coll. iii, Vt differ. indices, at the beginning.

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*Whether, when a man who has suffered an injury dares not litigate in the state  
of the person inflicting the injury, his own judge may write, asking to have  
the jurisdiction transferred to others, or arbitrators chosen?*

[Ch. cxlix.]

The second question is whether, if a party should hesitate to litigate in the state of the person inflicting the injury, because of that person's influence,



his own judge may write, asking to have the jurisdiction transferred to others, or arbitrators chosen by the civil law applying to certain persons in misfortune. It is clear that he may ; C. Quando Imperator inter pup. vel viduas, l. i, at the end. By canon law to-day a wider permission is given by Sext, De rescriptis, ch. *statutum*, § *cum vero*, as regards the article of request.

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*What judge ought to be required to do justice ?*

[Ch. cl.]

The third question is, What judge ought to be required to do justice ? Solution : In the first place, a judge of the state of the wrong-doer ought to be required ; and then, if he neglects to do justice, the injured party will apply to the next superior ; and if he fails, he will apply to the prince ; in Authent., Vt differ. iudic., at the beginning. If all these fail, reprisals will be declared by his own state, which succeeds to the place of the jurisdiction which has failed. But if the judge does not neglect to do justice, but does injustice by pronouncing an unjust judgement, then, if the state has a judge of appeal appointed over him, he will be applied to by way of appeal ; and if it has not, reprisals will be declared. For some blame must be imputed to a state which has not appointed a judge of appeal. But if two judges of appeals do injustice, then it seems that the party is without any remedy, since no third appeal is allowed ; nor does it appear that reprisals may be declared, since there has been no failure of jurisdiction. But it may be said that if they pronounced unjust judgements from favour to the other party, then "*restitutio in integrum*" may be claimed ; ff. De minoribus, l. *præfetti prætorio*. But if the reason was favour to the rulers, then they would be liable to the party for the loss caused him ; C. Ne liceat potent., l. i ; and De his qui potent., l. i ; and accordingly they are liable for the loss in an "*actio in factum*"; ff. Pro socio, l. *nec quidquam*. But if the unjust judgement arose from the judge's sole motion, then the party is without any remedy, as I showed above.

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*What degree of injustice is required before reprisals will be granted ?*

[Ch. cli.]

The fourth question is, What degree of injustice is required before reprisals will be declared ? Solution : They are not declared for a slight cause, since this is an extraordinary remedy, which is not given for slight cause ; ff. De in integr. restit., l. *scio* ; and ff. De dolo, l. *si oleum*. Also, a complete failure of justice is required. Otherwise, if the failure is partial only ; C. De preci. Imperat. offerendis, l. *quotiens*. For reprisals do not completely do justice ; C. De servis fugit., l. *mancipia* ; and ff. De damn. infecto, l. iv, § *in eum*.

*When is it to be said that resort to a superior is impossible, so that an occasion arises for reprisals ?*

[Ch. clii.]

The fifth question is, When is it to be said that resort to a superior is impossible, so that an occasion arises for a declaration of reprisals ? Solution : When it is impossible both in law and in fact, then reprisals are necessary ; xxiii, q. ii, ch. *dominus* ; and C. De Iudæis, l. *nullus*. But if it is possible in law, but not in fact, because they do not obey, then the answer is the same. But if it is possible in fact, but not in law—as, for instance, because a tyrant has seized the government—then follow the note of Innocent on De electione, ch. *nihil*. But if it is possible in law, but difficult in fact—for instance, when the Emperor is far away, and the party is very poor—then, too, occasion arises for reprisals ; ff. De pig. act., l. *si servos* ; ff. De divers. [et] temp. præscriptionibus.

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*Of the formal cause.*

[Ch. cliii.]

It remains to consider the formal cause ; and this is twofold : for there is the form of declaring, and the form of executing, the reprisals. But the form of declaring them involves the form of defence of the party against whom they are declared ; and on this, too, many questions arise.

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*By what law reprisals are granted ?*

And the first question is, by what law they are granted. Here some say that they are granted by those who do not recognize a superior. They should not be claimed from such persons by right of action, nor through an office ; but the royal power, whereby all things were disposed, should be invoked ; ff. De orig. iuris, l. ii. For all that is required is that which the law of nations required, namely, that the cause for which they are granted should be true, without prejudice, however, to the defences of the person against whom they are granted, since this belongs to natural law ; Clem., De re iudicata, *pastoralis*, § *ceterum* ; and it is enough for one who has obtained reprisals to show the grant, without other process of law. And there is a presumption that everything has been duly done, for it is like sacrilege to dispute a judgement of the prince ; C. De crimine sacrilegii, l. *disputare*. And this is true in the territory of the authority granting the reprisals, though the nation against whom they are granted might retaliate ; ff. Quod quisque iuris. And finally, any agreement on the subject ought to be recognized ; for example, to submit to an arbitrator or other person ; and the burden of proving that all things required by the law of nations have been duly observed would rest upon the person to whom



the reprisals are granted. Hence it is safer to have a legal process, and to reduce it to writing. This is the view of the Archdeacon in Sext, *De iniuriis*, the single chapter. For he holds that monition and sentence after the refusal ought to precede ; and Guido, Bishop of Concordia, agrees. But if reprisals are claimed by persons to whom the right has been granted by statutes, then, if the statute prescribes an order, that order ought to be observed. But if it prescribes no order, then, inasmuch as the power of granting reprisals proceeds from civil law, since statutes are civil law ; ff. *De iustit. et iure*, l. *omnes populi* ; then the office of an official ought to be invoked, a statement of claim delivered, the party cited, and proceedings taken as the laws ordain.

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*Who may appear to oppose the declaration of reprisals ?*

[Ch. cliv.]

The second question is, Who may appear to oppose the declaration ? Solution : Any one who has an interest ; *De testib.*, ch. *veniens* ; *De re iudi.*, ch. *cum super*. But the people against whom they are declared have an interest, so that any person instructed on their behalf should be heard ; and any member of the people should be heard, even without instructions, because all have an interest ; ff. *De novi oper. nunt.*, l. *in provinciali*, the last section. Also members of the people of the state declaring reprisals should be heard, because they are interested in preventing an unjust declaration, for fear of retaliation ; ff. *Quod quisque iuris*, in the red, and the black throughout.

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*What defences are allowed to one against whom they are declared ?*

[Ch. clv.]

The third question is, What defences are allowed to one against whom reprisals are claimed ? Solution : He may plead as an "exceptio," that the claimant has not the right to claim, either by reason of some personal incapacity, or of incompetency of the jurisdiction, or because he is ready to make amends ; xxiii, q. ii, ch. *Dominus Noster*. Can this right be renounced by agreement ? For example, suppose a ruler of the state of Bologna is elected, who swears not to claim reprisals against a state, will this renunciation be available by way of "exceptio" ? Solution : If the claimant has suffered an injury by reason of an unjust condemnation, then he must resort to his own judge, by way of appeal, to supply the failure of jurisdiction ; but an appeal may be renounced in this way ; C. *De temp. appellationum*, the last law. But if he has suffered an injury, then the agreement has no effect, because a wilful wrong would thereby be remitted by anticipation ; ff. *De pactis*, l. *si unus*, § *illud* ; ff. *De pact. dotalibus*, l. *convenire*.

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*How the commission of injustice, or the denial of justice, is to be proved.*

[Ch. clvi.]

The fourth question is, how the commission of injustice, or the denial of justice, is to be proved. Solution: By the records of the first judge, or by witnesses; and the first judge may be required to produce his records, and if he does not do so, that is an act of injustice; C. Vt lite pendente, l. ii.

*Whether, if property is seized on the strength of reprisals, it may be detained, by virtue either of the first decree, or of the second?*

[Ch. clvii.]

The fifth question is, whether, if property is seized on the strength of reprisals, it may be detained, by virtue of the first decree, or of the second. Solution: If, on the declaration of reprisals, the party was cited and appeared, and judgement was given on the matter, then it is detained by virtue of the judgement; ff. De re iudic., l. a divo Pio. But if he does not appear, then, in the first place, licence to seize will be given by the first decree, in order that the annoyance may induce the party to appear; and if he remains contumacious, then licence to detain will be given by the second decree.

*Of the form of executing reprisals.*

[Ch. clviii.]

It remains to consider the form of executing reprisals declared, and on this many questions arise.

*Whether one to whom reprisals are granted may, on his own authority, or by the servants of the magistrate granting them, seize persons against whom they are declared?*

And the first question is, whether one to whom reprisals are granted may, on his own authority, or by servants, seize persons against whom they are declared. Solution: Jacobus de Belvisio holds that he may not seize persons or property on his own authority, but only by judicial authority; ff. De re iudicata, l. miles. Others add that this is true only if recourse can be had to a judge; otherwise he may act on his own authority; ff. Quæ in fraud. cred., l. ait prætor, § si debitorem; C. De decur., l. generali. And I think this true. Yet the conditions of the grant should be weighed and observed; De rescriptis, cum dilecta; and ff. Mandati, l. diligenter.



*Whether one who seizes persons and property is bound to present them to the judge, or may retain them for himself?*

[Ch. clx.]

The second question is, whether one who seizes persons and property is bound to present them to the judge, or may retain them for himself. Solution: Jacobus de Belvisio holds that he is bound to present them to the judge; ff. De regul. iuris, l. *non est singulis*; the object being to prevent illegal exactions; ff. De offic. præsidis, l. *illicitas*. Others say that this applies to persons captured, who ought to be brought before the judge; C. De decur., l. *generali*; and coll. x<sup>(9)</sup>, De pace iuramento firmata. But property will be seized by reason of the judgement, on the strength either of the first or of the second decree, as was explained above, and will remain with the captor; ff. Vt in poss. legatorum, l. *is cuius*, § *qui legatorum*. And for this there is no more need to go before a judge, for the first grant suffices. In all these matters I think the form of the grant should be weighed.

*Whether property seized on the strength of reprisals should be sold, and how, or whether it should be accepted in payment, or be valued?*

[Ch. clx.]

The third question is, whether and how property seized on the strength of reprisals should be sold, or whether it should be accepted in payment, or be valued. Solution: Some authorities say it is sold by the authority of a judge; ff. De re iudicata, l. *miles*, § ii. A valuation will be made by the judge on request; C. De iure dot., l. ii; and in arriving at the amount an allowance will be made for expenses; ff. Ad. leg. Falc. l. *in quantitate*; and C. De iure deliberandi, l. *scimus*, § *in computatione*. And in these matters, too, I think that the form of the grant should be observed, as above.

*Whether a declaration of reprisals can be executed on holidays?*

[Ch. clxi.]

The fourth question is, whether a declaration of reprisals can be executed on holidays. Solution: They can be executed on days which are holidays because of human needs, just as judgements can; C. De iudiciis, the last law. But if the days are holy out of reverence to God, then some authorities say that this may be done to prevent the loss of the whole grant, for instance, if the persons against whom they are granted are . . ., and only come on holidays. They quote ff. De fer., l. i, and l. ii; and C. the same title, l. ii. Otherwise not; C. De feriis, l. *dies*. I cannot accept the second part of this conclusion. For things seized on the occasion of reprisals are seized by virtue either of the first

or of the second decree, or on the strength of the judgement, as was shown above. And all these are forbidden during such holidays ; l. *dies*, already quoted. Also the law specially lays down that on holidays held for human needs, proceedings may be taken in those cases ; ff. De feriis. l. i, and l. ii. But on days which are holy out of reverence to God, no exception is made, and therefore the rule must be observed.

*If a man wishes to defend himself, or property seized on the strength of reprisals, what jurisdiction should be invoked ?*

[Ch. cxiii.]

The fifth question is, If a man wishes to defend himself, or property seized on the strength of reprisals, what jurisdiction should be invoked ? Solution : Some authorities say that if a full execution has been made—if, for instance, the property has been sold or given in payment—then the ordinary jurisdiction is the proper one, and a man will not be heard if he invokes the extraordinary ; ff. De re iudicata, l. *a divo Pio*, § *si post addictum*. But if full execution has not been made, but is still pending, then he may invoke the extraordinary jurisdiction of the judge, which will cause an extract to be made of the records on the strength of which the reprisals were declared, and he may set up a defect in the claim of the person to whom they were granted, or a personal incapacity, or any of the other pleas which were mentioned above. They cite C. De edendo, l. ii ; and C. Vt lite pendente, l. ii ; and ff. De edendo, l. i. And on this, summary jurisdiction will be done. I cannot accept the second part of this conclusion. For if, when the reprisals were declared, the party was cited, and appeared, and took the usual steps in the proceedings, then it is clear that this conclusion cannot stand, because those “ exceptions ” should have been put forward from the first, and cannot be raised after judgement ; C. Sent. rescindi non posse, l. *peremptorias* ; and C. De except., l. *si quidem* ; and Extra., the same title, ch. *pastoralis*. But if, when they were declared, the party was contumaciously absent from the first or second decree, then the result is the same as that caused by the lapse of a year in a real action, because he will not be heard except by the ordinary procedure ; ff. De damn. infecto, l. *si finita*, § *si plures* ; and C. Quomodo et quando iudex, l. *consentaneum*, and the note there ; and De dolo et contumacia, ch. *contingit*. But it might be allowed at the first decree.

*Of the remedies of the person from whom the exaction is made.*

[Ch. cxiiii.]

The remedies of the person from whom the exaction is made belong to this part of the subject. And on this many questions arise.



*Whether the person from whom the exaction is made has a remedy against the person for whose debt or wrong it was made ?*

And the first question is, whether the person from whom the exaction is made has a remedy against the person for whose wrong or debt it was made. Jacobus de Arena holds, on ff. De verb. oblig., l. ii, that he has a remedy against the person on whose account reprisals were declared ; De neg. gest., l. *nam et Servius* ; ff. Nautæ caup. stabul., l. *licet*, the last section ; ff. De his qui deiec. vel effus., l. *si vero*, § *cum autem*. Others say the contrary, on the authority of ff. De reg. iuris, l. *si quis dolo*, § i. For he suffered the exaction, not because of the private person, but because of the judge who denied justice, or did injustice. They say, therefore, that either the judge is the person from whom the exaction is made, because he did injustice, and then the judge has no remedy ; l. *si quis dolo*, above ; or because he neglected to do justice, and then he has a remedy against the person of whom justice was required ; C. book x, De exact. trib., l. *missi*, at the end. Or, thirdly, he is one of the people, and then the opinion of Jacobus holds ; ff. Nautæ caup. stabul., l. *licet*, at the end, &c.

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*Whether the person from whom the exaction is made has a remedy against the ruler, as well as against the principal debtor ?*

[Ch. clxiv.]

The second question is, whether the person from whom the exaction is made has a remedy against the ruler, as well as against the principal debtor, as was shown above. Solution : The principal debtor must first be sued ; and if he is not solvent, then the ruler, since he, too, himself becomes a debtor by refusing justice. That this order must be observed appears from ff. De magistr. conven., l. i, at the beginning ; and C. De conven. fisci debitoribus, l. *quoniam*. Lastly, resort may be had to the officials, who might have obliged the ruler to do justice, but neglected to do so ; ff. De tut. et rati. distrahendis, l. i, § *nunc tractemus*.

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*Whether a person seized on the strength of reprisals may, on his own authority, seize persons belonging to the state in which he was seized ?*

[Ch. clxv.]

The third question is, whether a person seized on the strength of reprisals may, on his own authority, seize persons belonging to the state in which he was seized. And it seems that he may, from ff. Quod quisque iuris, the whole title. The contrary is the true view ; for the title Quod quisque iuris applies in the execution of law, as, for instance, if one state has unlawfully declared

reprisals against another, the other may do the like against the first. But it does not apply in the execution of an act and say that if I have robbed you, you may rob me, because that would be allowing retaliation. Against this, ff. Ad leg. Aquil., l. *scientiam*, § *qui cum aliter*. He must return, therefore, to his own state, and demand reprisals against the state in which he was seized.

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*Whether reprisals can be granted by statutes, in cases not otherwise permitted by the common law ?*

[Ch. clxvi.]

The fourth question is, whether reprisals may be granted by statutes, in cases not otherwise permitted by the common law. Solution: A state may grant them against countries fully subject to itself, even in cases not permitted by the common law; but not against countries which are independent, or even allied, as to which see ff. De captivis, l. *non dubito*. The reason is, that a grant of reprisals depends on the determination of a cause about injustice done, or justice denied, and in this one state cannot make rules against another, because "like against like," &c. Secondly, it depends upon whether recourse can be had to a superior of the party refusing to do justice. And on this matter one state cannot make rules against another. For it could not make a rule that reprisals should be declared, without appeal having been made to the superior of the party refusing to do justice. For that would be to destroy the jurisdiction of the superior; De iureiurando, *venientes*. Thirdly, the authority of the superior who declares the reprisals is required, this authority being one which does not itself recognize a superior; and on this a state may rule that, without that authority being appealed to, one person may be seized for another's debt; C. book xi, De omni agro deserto; just as there is a rule that in certain cases a wife is liable for the debt of her husband; C. In quibus [modis] causis pign. contrahitur, l. *satis*; and a son for his father; C. book xii, De primipilo, the last law.

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*Whether a statute of a state, which ordains that a son is liable for the wrong of his father, may be executed against a son living outside the territory of that state ?*

The fifth question is, whether a statute of a state, which ordains that a son is liable for the wrong of his father, may be executed against a son living outside the territory of that state. Solution: Either the son was born at the time of the father's wrongful act; and then either the question is whether the statute can be executed against the son living elsewhere, and it cannot; ff. De re iudicata, l. *a divo Pio*, the penultimate section; and ff. De rebus. auctor. iudi. possidendis, l. *cum unus*, § [cum is] *is qui*; or the question



is whether a "condiction" can be brought against him on the statute; and it can, because an action follows the person against whom it lies; C. De longi tempor. præscriptione, the last law. This is true, unless the son had acquired a domicile elsewhere before the commission of the wrong, or was absent by reason of a domicile of origin, because then the other state, as having priority, might protect him from the statute. But if the son is born after the commission of the wrong, then no action will lie against him. For the statute must be understood to refer to sons then existing; ff. De noxal., l. *in delictis*, § *si extraneus*; ff. De milit. testamento, l. [si] *Titius*. My answer is the same, if the statute ordains that one citizen is liable for the wrong of another. A person newly become a citizen is not liable for old debts; C. De decur., l. *providendum*; and note Dinus on ff. Ad municipalem, l. *incola*.

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*Whether it may lawfully be agreed that one person is to be liable for another?*

[Ch. clxvii.]

The sixth question is, whether it may lawfully be agreed that one person is to be liable for another. Solution: By express agreement of private persons, no; in Authent., Vt non fiant pignorationes. Even if one agrees that another over whom one has jurisdiction is to be liable; C. Ne filius pro patre, throughout. And although a lord cannot do this, yet the lord's judge may cause persons of such a condition to be seized.

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*Of particular war waged for compurgation, which is called the "duel."*

[Ch. clxviii.]

It remains now to consider the duel, in treating of which I shall first ask what a duel is; secondly, how many kinds of duel there are; thirdly, by what law it is allowed, and by what forbidden; fourthly, for what reason it is allowed, and for what forbidden; fifthly, for what causes a duel is lawful; sixthly, between whom it is lawful; seventhly, how it should be waged.

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*What is a duel?*

[Ch. clxix.]

As regards the first question, I say that a duel is a corporeal fight between two persons, deliberate on both sides, designed for compurgation, glory, or exaggeration of hatred. I said a "fight." This is the genus to which it belongs. I said "deliberate on both sides." This distinguishes it from a fight in necessary self-defence, as to which see ff. De iustit. et iure, l. *ut vim*; C. Vnde vi, l. i; ff. De vi et vi arm., l. i, § *vim vi*; ff. Ad leg. Aquil., l. *scientiam*, § *qui cum aliter*; De restit. spoliat., ch. *olim*, i; and Clemen., De homicidio, *si furiosus*.

For in a fight of that kind there is ordinarily no deliberation on the part of the attacked, but only on the part of the attacker, or on the part of neither, as appears from Clemen., *si furiosus*, just cited. But in a duel there is deliberation on both sides. I said "between two persons," because a fight is then properly called a duel, following the etymology of the word; Instit., De donat., § *est et aliud*; xvi, q. i, *si cupis*; dist. xxi, *cleros*; De præbend., *cum secundum*. "A fight between two persons," to distinguish it from contracts formed between two persons by mutual agreement of the parties; Instit., De obligationibus, with the rescripts following. And I said "corporeal," to distinguish it from a judicial fight, which also takes place between two persons, as plaintiff and defendant; C. De iudic., l. *rem non novam*, § *patroni*; and the same title, l. *properandum*; and De verbor. significatione, ch. *forus*. For there the contest is not fought by the strength of the body, but by the laws; see the laws just cited. I said "designed for compurgation, glory, or exaggeration of hatred"; for this touches the end, and indicates the kinds of duel, as follows below. This, then, concludes the description of the genus of duel.

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*How many kinds of duel are there?*

[Ch. clxx.]

As regards the second question, it must be noted that the duel, as above described, is regarded generally, and, as I suggested at the end of the description, the kinds of duel are indicated by the words placed at the end; for there are three kinds of duel. For a duel is fought either for exaggeration of hatred, or to win public glory by the strength of the body, or for the compurgation of some accusation brought.

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*How a duel is fought for exaggeration of hatred.*

It is fought then for exaggeration of hatred, when men are induced by mere hatred, natural in its origin, and of that singular naturalness which natural philosophers call the "specific form," to exterminate one another. And I do not find that this duel is regulated by legal rules; but it springs from natural first principles, as I shall at once show, and because it is approved by sensual experience.

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*How a duel is fought to win public glory.*

It is fought, secondly, to win public glory, as in public spectacles, when two men prove their bodily strength in various ways. I find that this form of duel is regulated by both civil and canon law. By civil law: ff. Ad leg. Aquil., l. *hac actione*, § *si quis in colluctatione*; C. book xi, De glad. toll., the single law; C. De re iudic., l. *commodis*; ff. De his qui not. infam., l. *athletæ*; C.



De athleticis, l. i ; C. Quæ res pign. obl. poss., l. *spem* ; ff. De donat., l. *donationes*. Note the gloss on Instit., De hæredit. quæ intest. defer., § *interdum*. By canon law : De clericis pugnantis in duello. But there it is also for compurgation ; De torneam., throughout. But it is not properly the duel, but the “pancratium” ; ff. Ad leg. Aquiliam, l. *hac actione*, § *si quis in colluctatione*.

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*How a duel is fought for the compurgation of an accusation.*

It is also fought, thirdly, for compurgation ; that is to say, when an accusation is laid on a person, and the party challenging to the proof, either with or without other proofs, offers to prove it by his bodily strength, and a duel is fought, and the person challenged “purges” himself in this way. And this also is regulated by law ; De cler. pugn. in duello, cited above ; De purga. vulgari, throughout ; ii, q. v, the whole question ; and in the Lombard law, to which I shall return when I discuss that part of the subject.

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*By what law is the duel permitted, and by what forbidden ?*

[Ch. cxxi.]

As regards the third question, namely, by what law the duel is introduced, it is well to explain the several kinds of duel above set forth, showing, as to each, by what law it is permitted, and by what forbidden. And first, of the duel which arises on account of exaggeration of natural hatred, as to which we must understand that this duel was introduced by natural law, in the sense of an instinct of nature proceeding from sensuality to some desired object, this being the second signification of the term, as the gloss notes on dist. i, *ius naturale* ; and ff. De iustit. et iure, l. i, § *ius autem naturale*. And the duel itself is forbidden by natural law, in the sense of an instinct of nature proceeding from rational intelligence, which is called natural equity. There is also a third meaning of natural law ; see the canon quoted, *ius naturale*. It is also forbidden by natural law in the sense of the law containing the moral precepts of divine law, which is a fourth meaning of the term ; see the canon just quoted. This duel is also forbidden by positive law ; that is to say, by canon and civil law. Each of these points must be proved.

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*How the duel which is fought for exaggeration of hatred is introduced by natural law, in the sense of an instinct of nature, proceeding from sensuality towards some desired object.*

I said that this form of duel is introduced by natural law, in the sense of an instinct of nature, proceeding from sensuality towards some desired object. This is demonstrated as follows : Whatever is productive of the immediate cause of an effect is consequently productive of that effect. But this natural

law, originally inclining towards such desire, is the inducing cause of this sensual desire for duelling. Therefore it is the inducing cause of the duel. The major premise is proved. For whatever sufficiently impresses itself on the cause of the productive cause thus remotely, impresses itself on the effect ; ff. Ad leg. Corn. de sicar., l. *nihil* ; C. the same title, l. *si quis notandi* ; dist. i, *studeat* ; and can. *si quis viduam* ; De homicidio, *de cetero*, and ch. *presbyterum*. The minor premise is proved. For from natural disposition, proceeding from natural first principles, both higher and lower, come the various inclinations of men's desires. For, if any personal merit or demerit is eliminated, that which displeases me will naturally please you, and conversely ; and it is from natural disposition, if any accidental quality is eliminated, that a man loves and hates. Any one can test this in himself. But the cause of this is easily discovered, if we observe the celestial bodies. For persons who, at the time of their birth and at the moment of their birth, have a uniform correspondence of the heavenly configuration, and whose paternal origins agree in complexion, are undoubtedly by nature the firmest friends. So if these signs are repugnant, they are one another's bitterest enemies. For uniform effect must follow from uniform cause ; C. Ad leg. Falc., the last law ; ff. Ad leg. Aquil., l. *illud* ; ff. De fonte, l. i ; De constit., *translato* ; and De translat. episcoporum, ch. *inter corporalia*. And yet here we must note that this natural enmity between man and man, as I said before, proceeds from a singular natural disposition, which natural philosophers call "the specific form." For if we observe the natural disposition of the human species, there ought to be friendship between men, on account of the uniformity of complexion related to the human form ; and on this account the laws say that between man and man there is a duty of humanity, to be observed on one side and the other ; ff. De servis expor., l. *si servus*, at the end ; and C. De neg. gest., l. *officio*, and the gloss there. And so this does not arise from the natural disposition of the species, because we do not find it existing naturally if we refer to the several species of animals. For between the several species of brutes there is a sort of treaty of union and cohabitation, because of the uniformity of complexion related to the specific form. But between species and species there is sometimes the extremity of repugnance, inducing one to exterminate the other ; for instance, between hawks and birds that are good for fowling, cats and mice, dogs and hares and so on. It proceeds, therefore, from some individual disposition of repugnance of first principles, higher and lower. Any one may experience the effect in himself. Yet this disposition does not ordinarily induce a duel immediately, but only through intermediate acts to which the persons quickly proceed, though I believe that the repugnance of individual disposition might be so strong that men might proceed to a duel at sight. And this happens when men are ruled by sensuality alone, and not by any consideration of reason. From this discussion we may infer how this form of duel is introduced by natural law, understood in the sense explained.



*How the duel which is fought for exaggeration of hatred, is forbidden by natural law, in the sense of rational intelligence, and by divine law, canon law, and civil law.*

[Ch. clxxii.]

It remains to consider what I said in the second place on this subject. For I said that this duel was forbidden by natural law, in the sense of rational intelligence, and therefore by the law of nations ; and by natural law in so far as it contains the moral precepts of the divine law ; and by canon law, and civil law. This may be demonstrated more clearly than day, beginning with the divine law. For one of the precepts of the Decalogue is, " Thou shalt not kill " ; and thus it is forbidden by the divine law, and this is the ordinary rule. And if the instance of Jephthah be cited, who killed his daughter, and yet did not sin, by divine law ; Judges, ch. xi ; xxii, q. iv, *unusquisque* ; xxiii, q. v, *si non licet* ; and of Samson, who killed many persons, and himself ; Judges, ch. xvi ; xxiii, q. v, *si non licet* ; they prove nothing to the contrary, because these acts were inspired by the Holy Spirit, as Augustine writes in the first book of the *De Civitate Dei*, quoted in xxiii, q. v, ch. *si non licet*. So, therefore, it is forbidden by divine law by the precept, " Thou shalt not kill " ; Deuteronomy, ch. v. It is also forbidden by canon law ; *De homicid. volunt.*, dist. i, throughout ; xxiii, q. v, *si non licet*. It is also forbidden by civil law ; ff. *Ad leg. Corn. de sicar.* ; and C. the same title, throughout. And if you say that those laws forbid voluntary homicide, and therefore the kind of duel from which voluntary homicide arises, but that homicide arising from the duel which is introduced by natural disposition is not voluntary, being introduced naturally, and that therefore those laws do not conclude this case, the solution is ready to hand. For although it is introduced by a natural bodily disposition, yet the dictates of natural intelligence dispose to the contrary. And the latter should be obeyed ; for the natural disposition does not compel, but the will remains free ; xxiii, q. iv, *De Tyriis* ; and ch. *Nabuchodonosor* ; and *De Pœnit.*, dist. ii, ch. *sicut enim* ; and the Philosopher, *Ethics*, iii. Even astrologers too, who demonstrate this more effectively, assert the same. Hence Ptolemy says, in the *Centiloquium*, tenth phrase, " a wise soul dominates the stars." So, therefore, although the bodily disposition proceeds from a natural first principle, yet natural intelligence remains, and disposes to the contrary. So it might be said of the several kinds of moral vices. For particular men are naturally inclined to particular vices : some are proud, some luxurious, some miserly, and so on. Yet they are not excused, because they are not actually compelled ; xxiii, q. iv, ch. *Nabuchodonosor*. Hence the saying of the Philosopher in *De anima*, iii, the treatise on motion, that between sensitive and intellectual appetite there is sometimes opposition. For the sensitive tends in one direction, the intellectual in another ; and if the intellect prevails over sense, the motion is rational and natural, as if a higher sphere moves a lower. But if the contrary happens, the motion is contrary to nature, as if a lower sphere moves

a higher ; for although the motion of sense proceeds from nature, inclining to vice, yet it is contrary to nature, if sense does not obey intellect, as a subject its lord, as the same Philosopher says in the first book of the Politics. This kind of duel is also forbidden by natural law, in the sense of natural intelligence, which is the same thing as the law of nations. This is proved as follows : For common and natural equity springs from natural intelligence, disposing it to the conservation of the universe ; and thence positive law had its origin, nay, it would be truer to say, it is itself the equity of natural law with some additions or omissions ; ff. De iustit. et iure. l. *ius civile*. Since, therefore, this natural equity tends to the conservation of the universe, it reprobates the extermination of a man, which is a thing tending to the destruction of the world ; and I speak of extermination tending to the destruction of the world, because the extermination of some men tends to the conservation of the world, for instance, when bad men are exterminated. For on this account it is in the interest of the commonwealth that they should be punished ; ff. De publ. et vecti., l. *licitatio* ; ff. Ad leg. Aquil., l. *ita vulneratus*, at the end ; ff. De fideiuss., l. *si a reo* ; De sent. excom., *ut famæ*. From this discussion we may clearly infer how this kind of duel is forbidden by divine law, by the law of nations, by canon law, and by civil law.

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*How the duel which is fought for the sake of glory is introduced by natural law, in the sense of an instinct of nature proceeding from sensuality.*

[Ch. clxxiii.]

It remains to consider what law introduced, and what forbids, a duel fought for the sake of the glory of victory at a public spectacle. And I say that this kind of duel was introduced by natural law, in the second signification of the term—that is to say, an instinct of nature proceeding from sensuality—but that it is forbidden by natural law in the sense of the law of nations and the divine law. It is also forbidden by canon law and civil law—with qualifications, however, as I shall show presently. Let us demonstrate each of these statements. I said that it was introduced by natural law in its second signification. This is proved by the arguments set forth in the last section. For sensual inclination proceeding from natural first principles induced to the trial of bodily strength merely to win glory. Therefore it induces this kind of duel which proceeds from that cause, since a producing cause produces its effect ; see the laws cited in the last section. This kind of duel, however, is less hateful than the first kind, if we regard the end of each. For the first kind of duel has extermination for its end, by reason of abiding natural enmity. But the present kind does not necessarily lead to extermination, but to victory, which may be won without extermination. Therefore it is less hateful, since men's acts are distinguished according to the ends intended ; ff. De furtis, l. *verum*, and l. *qui iniuriæ* ; ff. De [fal.] furtis, l. *qui ea mente* ; xv, q. vi, ch. i ; xiv, q. v, *quidquid* ; De sent. excom., *cum voluntate*. Hence it is that the Philosopher says in Ethics,



iv, that one who commits fornication with a woman that he may get money thereby, is not an adulterer, but a miser. It follows, therefore, that if we weigh the end, this kind is less hateful than the former. This is confirmed by the following consideration : The first kind arises from hatred, which in itself is detestable, if it arises without reasonable cause, as it does there. But this kind of duel arises without hatred. For even natural friends would fight duels at a spectacle to the end of winning glory. It is confirmed as follows : A thing which is less far removed from natural equity, is less hateful ; but this second kind of duel is less far removed from natural equity. Therefore, &c. The major premise is proved. For detestation and approbation of acts proceed from natural equity, on which are founded the prohibitions and permissions of the law ; ff. De iustit. et iure, l. *ius civile* ; and dist. i, can. *ius naturale*. The minor premise is proved. For this duel departs from the equity of natural law only because the killing of a man might follow from it, which is an act tending to the destruction of the universe, upon which equity the prohibition of the new civil law is founded ; C. book xi, De gladiat., the single law. But it was not prohibited by the old law, because proceedings against persons killing one another in this way were remitted ; ff. Ad leg. Aquiliam, l. [hac] *qua actione, § si quis in colluclatione*. But the first kind is far removed from natural equity. In the first place, because it tends to the necessary extermination of one or both. It differs also in being inspired by hatred, which natural equity abhors, if it arises without cause. Therefore it is more detestable. This is confirmed as follows : That which is wholly injurious and beneficial in nothing, is more hateful than that which is partly beneficial and partly injurious. But the first kind is wholly injurious, and beneficial in nothing ; but this second kind is partly beneficial. The major is clear. For acts are classed as laudable and blameworthy by reason of the laudability and blameworthiness of their ends, since in such matters the end is weighed ; ff. De ritu nupt., *si quis in senatorio* ; ff. De iure fisci, l. *non intelligitur, § si quis palam* ; ff. De iudiciis, l. *cum furiosus*. The minor is proved. For the first kind has for its sole object mutual extermination, which is injurious ; but the second takes place in a public spectacle for the pleasure and recreation of the people. And this is why games and spectacles are permitted ; C. book xi, De spectacul. et scænic. et lenon., the whole title, except the last law ; and C. De expen. ludor., the single law ; a Greek constitution. This discussion leads to the conclusion that this kind of duel was introduced by natural law, in the second signification of the term, and that it is less hateful than the first kind.

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*How the duel which is fought for the sake of glory is forbidden  
by divine law.*

[Ch. clxxiv.]

It remains to consider how this kind of duel is forbidden. And I said that it was forbidden by divine law, by the law of nations, and by positive law,

that is, by canon law and civil law. Now that it is forbidden by divine law may be proved thus : For when a thing is forbidden by any law, everything which leads to that thing is also forbidden. But homicide is forbidden by divine law, and this kind of duel leads to homicide. Therefore, &c. The major premise is proved by ff. De sponsal., l. *oratio* ; ff. De fideius., l. *cum lex* ; C. De usuris, l. *eos*, at the end ; C. De usuris rei iudic., the last law, at the end ; ff. De pet. hæred., l. *sed si lege*, § *item veniunt* ; ff. De mino., l. iii, § *sed utrum*. The minor is proved by Deuteronomy, ch. v, "Thou shalt not kill." But that this kind of duel leads to homicide is clearer than day. This is confirmed as follows : An act which is alien from the fountain of charity, is forbidden by divine law ; and this kind of duelling is so alien. Therefore, &c. The major is proved ; for charity is the foundation of all the virtues, and excludes the vices ; De Pœnit., dist. ii, *caritas est*, and ch. *ergo*, and the first part of that "distinctio" throughout ; and so a thing which is alien from charity savours of the nature of sin, and is therefore forbidden by divine law. The minor is proved. For charity is the love of God, and of one's neighbour as oneself ; De Pœnit., dist. ii, ch. *proximos* ; but one who fights a duel at a spectacle fights in order to conquer his neighbour, and so loves him not. Therefore it is forbidden by divine law.

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*How the duel which is fought for the sake of glory is forbidden  
by the law of nations.*

I said, too, that it was forbidden by the law of nations. This is proved as follows : An act which tends to the destruction of the universe is forbidden by the law of nations. This kind of duelling is such an act. Therefore, &c. The major is proved as follows : Natural equity, on which the law of nations is founded, tends to the conservation and increase of the universe ; ff. De iustit. et iure, l. i, § *ius naturale* ; and ff. the same title, l. *ex hoc iure*. The minor is proved thus : This kind of duelling tends to the destruction and extermination of a man, who is the noblest part of the universe, nay, who is the end of things created ; ff. De usuris, l. *in pecudum* ; therefore it is forbidden by the law of nations. This is confirmed thus : An act which is opposed to the precepts of natural equity, which is the law of nations itself, or its foundation, is forbidden by the law of nations. This kind of duelling is so opposed. Therefore, &c. The major is proved thus : Everything whose opposite is commanded is forbidden by the law of nations, since the same rule applies to opposites ; ff. De his qui sunt sui vel alien. iuris, l. i ; Instit., the same title, at the beginning ; dist. xxxii, *hospitiolum*. The minor is proved thus : It is one of the precepts of the law of nations, that a man is not to be enriched at another's expense ; ff. De condic. indebiti, l. *nam hoc* ; and Sext., De regul. iur., rule *locupletari*. It is also a precept of the law of nations, that you should not do to another what you do not wish to be done to yourself ; see the beginning of the Decreta ;



but this kind of duelling is opposed to both precepts. And in the first place, it is opposed to the first precept because the duellist seeks glory from the disgrace of his fellow and neighbour, and he would not wish this to be done to himself ; therefore it is forbidden by the law of nations. This is confirmed thus : An act which is a kind of unlawful war is forbidden by the law of nations. This kind of duelling is so. Therefore, &c. The major is proved, because only lawful war has been introduced by law ; ff. De iustit. et iure, l. *ex hoc iure* ; and ff. De captivis, l. *hostes*. The minor is obvious. For a duel is not a war declared by the authority of a prince, nor for necessary defence. Therefore, &c. From this we may infer that this kind of duelling is forbidden by the law of nations. But the following objection will at once be raised to the foregoing arguments. This kind of duelling takes place for a test of fortitude, and fortitude is a moral virtue, nay, even a cardinal virtue. But neither moral virtues nor their exercise are forbidden by the law of nations. Therefore the conclusions just reached do not stand. But that there are, here, acts of true fortitude, which is a moral virtue, is obvious. For in this kind of duelling there are waiting and attack. Solution : In the examination of this contrary conclusion we must observe that there is a true fortitude, which is a moral and a cardinal virtue, and that neither it nor its operation is forbidden by the law of nations. There are also counterfeit forms of fortitude, as to which see the Philosopher, Ethics, iv, treatise on fortitude, which participate in the acts of attacking and awaiting, and are five in number. For some men attack on account of the fear of punishment, because those who flee from a war are punished. Others attack on account of their experience in the art of war, as mercenaries ; and these, as they readily attack, so they readily flee, as the Philosopher says in the passage above cited. Others attack on account of anger, without weighing the danger. Others attack on account of hope, not believing in the presence of danger, and would not attack if they thought that danger was present. Others attack for the sake of winning the world's applause, because it is usual to praise the brave, and to scorn the timid. These five qualities are counterfeit imitations of true fortitude, which is a true moral and cardinal virtue. But for true fortitude these conditions are required ; namely : that a man should act knowingly, for an act done in ignorance is not an act of virtue, because prudence ought to control every act of virtue ; secondly, he must act from choice ; thirdly, he must choose the act for its own sake, that is to say, for the sake of the goodness and worth of the act in itself, and not for the sake of something extrinsic to it ; fourthly, he must act firmly and gladly. All the counterfeit forms mentioned above fall short, more or less, of the true form. But they all fall short in this, that those who act according to them, do not act for the sake of the act itself, that is, for the sake of its goodness and worth. So in the case proposed ; those who do the acts of attacking and awaiting in this kind of duel, do them for the sake of glory, not for the sake of the goodness and worth of the act in itself ; nor, again, are they acting herein in performance of any duty. These arguments are collected from the

Philosopher's treatise on fortitude, Ethics, iv. We may conclude, therefore, from the foregoing, that this kind of duelling is forbidden by the law of nations.

*How the duel which is fought for the sake of glory is forbidden by canon and civil law.*

I said that this kind of duel is forbidden by canon and civil law. Clearly it is so by canon law, since that law, in its prohibitions and permissions, imitates the paths of divine law, by which this duel is forbidden, as I showed above. It is also proved by De pugnan. in duello, the red and black, although there clerks are referred to, because the same rule applies to all. It is better proved by the title De torneamentis, where burial is denied to those who die in tournaments. This, then, is clear. But how it is forbidden by civil law must be considered at some length, because this kind of duel seems to have been allowed by the old law of the Digest. This is proved by the text of ff. Ad leg. Aquil., l. *hac actione*, § *si quis in colluctatione sive in pancratio*, where it appears that a penal action does not lie against one who kills another in a duel of pugilists. It appears to be forbidden by a new law of the Code, as is proved by the text of C. book xi, De gladiat., the single law. What, then, shall we say? Shall we say that the old law has been amended by the new? ff. De legibus, l. *non est novum*. Here I think we should observe that a fight is not necessarily bloody, where it does not tend to the shedding of blood, as when men wrestle with their arms, or the like; and I do not find that this kind of wrestling is forbidden by the civil law, either old or new; nay, the new law even permits spectacles for the recreation of the people; C. book xi, De spectac., the whole title, except l. *lenones*; and C. the same book, De expen. ludorum, throughout. But a fight may tend to the shedding of blood, as in tournaments and in a duel to the death; and this is undoubtedly forbidden by the new law of the Code; C. book xi, De gladiat.; and the reason of the prohibition is suggested when it is proved that it is forbidden by divine law, and by the law of nations. But it appears to be permitted by the old law; ff. Ad leg. Aquiliam, l. *hac actione*, § *si quis in colluctatione*. But perhaps you will make the following objection. You will say that this duel is forbidden by the law of nations; but the civil law is not an equity different from the equity of the law of nations; it is the equity of the law of nations itself, with details and limitations of its own added; ff. De iustit. et iure, l. *ius civile*; therefore, if it is forbidden by the law of nations, it cannot be permitted by the civil law; otherwise the civil law will be opposed to the law of nations. I have hesitated at this opposition; but I have weighed the words, § *si quis in colluctatione*, and the intention which I believe the legislator to have had. And by way of evidence I observe that permission may be of three kinds. It may be a simple permission, which remits and waives a penalty; dist. iv, *denique*; for, as the gloss there notes, a remission of penalty, not of blame,



is there made. The second form of permission removes the obstacles to that which is permitted, as the text says that Jews are permitted to dwell among ourselves, for the obstacles which hinder them from being able to dwell with us according to their rites are removed; dist. xlv, *qui sincera*. A third form of permission is also found, which assists the act which is permitted; for example, we say that the Church sometimes permits a clerk to be put to death by a secular judge, by affording assistance, because it actually hands him over, De iudic., ch. *cum non ab homine*; De crim. falsi, ch. *ad falsariorum*; and De verb. significatione, ch. *novimus*. The second form of permission adds something to the first, because it removes an obstacle, which the first did not, for it only remitted a penalty. The third adds something to the second, because it assists the permitted act, which the second did not, for it only removed obstacles. Now to apply the words to the case in point, if I rightly understand the section, § *si quis in colluctatione*, the text there remits the penalty on one who kills another in a wrestle, and it adds the reason, which is that the injury is not intentional. The permission given will therefore be the first form, which remits a penalty, but I nowhere find the law providing that this duel is permitted by the second or third forms of permission. But there is no opposition if the law of nations forbids, and the civil law remits the penalty; for the civil law, which imposes a penalty for homicide, imposes it for an intentional act; and so, as intention is here wanting, the civil law remits the penalty, as shown above. From this discussion we may infer by what law this kind of duel is forbidden, and by what it is permitted.

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*For what reason is the duel permitted, and for what is it forbidden?*

[Ch. clxxv.]

In the fourth division of the subject, which asks for what reason it is permitted, and for what forbidden, we must consider what law forbids, and what permits, the duel of compurgation. And this is properly and strictly called "duel" in ordinary usage. And I say that the duel is forbidden by divine law, and by the law of nations, and by positive law. By the canon law, without exception. By the civil law, as a general rule; but it is permitted in certain cases by the Lombard law, as I shall show when I discuss them.

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*How the duel of compurgation is forbidden by divine law.*

That this duel is forbidden by divine law is proved as follows: An act which is a temptation of God is forbidden by divine law. But this duel is so. Therefore, &c. The major is proved by the precept, "Thou shalt not tempt the Lord thy God." The minor is proved; for God is tempted when anything against nature, which is not possible except by a divine miracle, is asked of

Him, as it is directly in this duel of compurgation. For it is natural that a stronger and more skilful man should conquer a less strong and less skilful ; nor can the contrary happen in the natural order of things. But sometimes the less strong and less skilful has justice on his side ; and by the duel we ask that he may obtain the victory, and his justice be declared. So, therefore, God is tempted to work a miracle. This is confirmed thus : An act which is invented by the contrivance of the Devil is forbidden by divine law. This duel is so. Therefore, &c. The major is proved. For nothing is common to God and the Devil, to light and darkness. The minor is proved by ii, q. v, ch. *Mennam* ; and ch. *consuluisti*, in the same cause and question. This is confirmed thus : An act by which an innocent person is condemned, is forbidden by divine law. This duel is such an act. Therefore, &c. The major is proved. For God does not wish the innocent to be condemned ; xxii, q. ii, ch. *quæritur*. The minor is proved by De purg. vulgari, ch. *significantibus*. Therefore, &c.

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*How the duel of compurgation is forbidden by the law of nations.*

Secondly, I said that this duel is forbidden by the law of nations. This is proved as follows : An act which is opposed to natural equity, on which the law of nations is founded, is forbidden by the law of nations. But the duel of compurgation is such an act. Therefore, &c. The major is clear. The minor is proved ; for the equity of the law of nations dictates that offenders should be punished, the innocent acquitted. But in this duel the reverse sometimes occurs. Therefore it is forbidden by the law of nations. It is also opposed to the precept, “ quod tibi non ius,” at the beginning of the Decreta.

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*How the duel of compurgation is forbidden by canon law.*

I said that it was also forbidden by canon law. This is clear from De purg. vulg., throughout ; De pugnan., throughout ; ii, q. v, from ch. *consuluisti* to the end of the question. And the same reasons might be given which were given to prove that it is forbidden by divine law, since canon law follows the prohibitions and permissions of divine law. This is confirmed. And this proves also that it is forbidden by civil law. For an act which excludes the observance of positive law is forbidden by positive law. This duel does so. Therefore, &c. The major is proved. For if an observance is ordained by positive law, it follows that the exclusion of the observance is forbidden ; for as one rule governs one case, the opposite rule governs the opposite case ; ff. De his qui sunt sui vel al. iur., l. i ; Instit., the same title, at the beginning ; dist. xxxii, *hospitiolum*. The minor is proved ; for positive law has provided actions, both civil and criminal, and a whole judicial system, whereby it proceeds to declare the rights of parties ; C. De iudiciis, l. *properandum* ; Authent.,



*offeratur* ; C. De litis contest., the single law ; C. De sentent. et interloc. omn. iudic., l. *prolatam* ; and De probationibus, ch. *quoniam contra* ; so that every man may receive his due ; xii, q. ii, *cum devotissimam* ; ff. De iustit. et iure, l. *iustitia* ; and Instit., the same title, § *iustitia*. But duelling utterly excludes this observance. Therefore this duel is forbidden by positive law. This is confirmed thus : An act whereby justice is denied to parties is forbidden by positive law ; but this duel is such an act. Therefore, &c. The major is proved, because positive laws are promulgated to this end by divine permission through the mouths of princes ; C. De long. tempo. præscript., the last law ; dist. viii, *quo iure* ; xvi, q. i, *placuit*. The minor is proved, because in this duel it sometimes happens that the innocent falls, and thus a wrong is inflicted on him ; and it sometimes happens that the guilty prevails and so justice is not done to the challenger. This discussion leads to the conclusion that this kind of duel, the object of which is the compurgation of an accusation, will be forbidden by positive law ; by canon law, without exception ; by civil law, as a general rule.

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*How the duel of compurgation is forbidden by civil law, as a general rule.*

I said, also, that as a general rule this duel is forbidden by civil law. It is allowed, however, in two cases by the Lex Frederici, De pace tenenda et eius violatoribus ; for example, if a man kills another in times of peace, and there is no doubt about the homicide, he is punished by capital punishment as a breaker of the peace, unless he wishes to prove by a duel that he did the act in self-defence, and this is a special case in which the accused has an option of the duel. The other case is, that if a man wounds another in times of peace, he will be punished, unless he wishes to prove that he did it in self-defence. These two cases are in De pace tenenda et eius violatoribus, the single law, the first in § *si quis hominem infra pacem*, the second in § *si quis alium*, in the same law. But the Lombard law allows it in other cases, as I shall show below. This concludes the third principal part of this treatise, on the question what law introduced the duel, and what law forbids it, the several kinds of duel being distinguished. From the above, therefore, the explanation of the fourth part is clear, namely, for what reasons it is forbidden and permitted. For the first duel is forbidden by every law, and permitted by none ; and the reasons have appeared above. So in treating of the second, and of the third, I reduce the several matters debated in the several parts to this proposition.

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*In what cases is the duel of compurgation permitted ?*

[Ch. clxxvi.]

We must consider the fifth principal head, namely, in what cases the duel is permitted. Of the first kind, I have said that it is permitted in no

case. Of the second kind, I have said in what sense it is permitted. We must now consider the third kind, since the Lombard law permits it in several cases, and devote the rest of the treatise to this third kind alone.

*How the Lombard law permits the duel of compurgation in twenty cases.*

We must ask, then, in what cases this duel is permitted, besides the two noted above, which are found in the *Lex Frederici, De pace tenenda et eius violatoribus*. Solution: Duel is permitted on a charge under the *lex Iulia maiestatis*, when one man brings that charge against another; *Lombarda, De publicis criminibus*, l. *si quis*, the last law. Secondly, when a wife is charged with having been privy to the death of her husband; *Lombarda, De consilio mortis*, l. *si mulier*, the last law. Thirdly, in the wrong of "*cucurbitatio*," if one calls another "*cucurbita*"; *Lombarda, De conviciis*, l. *si quis alium*. The fourth case is where a homicide is committed during a truce; *Lombarda, De homicidio*, l. *qui intra treugam*. The fifth is for a homicide committed by stealth; *Lombarda, De homicidio*, l. *liber homo*. The sixth is in a charge of parricide, if it is said to have been committed out of desire for the dead man's goods; *Lombarda, De parricidio*, the last law, at the end. The seventh concerns a theft by a slave, if the master should deny that his slave committed the theft; *Lombarda, De furtis*, l. *si quis alium*, which, according to some, was a law "*convalcosiana*." The eighth is on a charge of adultery, as if one is accused of having committed adultery with another's wife; *Lombarda, De adulterio*, l. iii. The ninth is if a man says that adultery has been committed with a woman, and wishes to prove it in this way; *Lombarda, De iniur. mulier.*, l. ii, *si quis puellam*. The tenth is if it is said that a man has wrongfully possessed a movable or immovable thing for thirty years; *Lombarda, De præscript.*, l. *si quis alium*. The eleventh is between conflicting witnesses; *Lombarda, De testi.*, l. *si quis cum altero*; which is allowed if the witnesses are called by opposite parties; if by the same party, there is no duel. For either the plaintiff proves his case, and the defendant is condemned, or he proves nothing, and the defendant is acquitted. But if they are called by opposite parties, and in other respects the sides are equal, then a duel takes place. The twelfth case is for a father's debt, against a son who denies it; *Lombarda, Qualiter quis se defendat, et in quibus casibus pugna prohiberi vel fieri debeat*, l. *si quis post mortem*. And the true meaning of that law is that it refers to a debt arising from delict. The thirteenth case is for arson, if action is brought against the wrong-doer; *Lombarda, Qualiter quis se defen.*, etc., l. *si quis alium*. But a duel does not take place if action is brought against an accessory; *Lombarda, De consiliis illicitis*, the single law, at the end. The fourteenth is for adultery, as if a husband says that his wife is an adulteress; *Lombarda, Qualiter quis se defendat*, etc., l. *si quis uxorem*. The fifteenth is if a husband suspects that another has misconducted himself with his wife;



and by misconduct the law means carnal intercourse ; Lombarda, Qualiter quis se defendat, etc., *si quis amodo*. The sixteenth is for perjury ; Lombarda, Qualiter quis se defendat, etc., l. *de furto*. The seventeenth case is a duel for " investiture," as when one man says that he was invested first, and was ejected from possession, and another says the same ; l. *de investitura*. The eighteenth is for the denial of a deposit, as where more than twenty solidi have been deposited ; l. *si quis pro se*. The nineteenth is where a man is accused of having extorted a charter by violence ; Lombarda, Qualiter quis se defendat, etc., l. *si quis dixit*. The twentieth and last case is a duel on a claim for a slave's freedom ; l. *si servus*. Some say that this law was " convalcosiana."

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*Between whom should a duel be fought ?*

[Ch. clxxvii.]

We must consider the sixth principal head, namely, between whom a duel may be fought.

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*How the duel of compurgation should generally be fought between principals.*

And I say that the rule of the Lombard law, which allows a duel in the cases above mentioned, is that a duel should be between principals. But to this rule there are eight exceptions. First, if youth forbids it. Second, if the decrepitude of age, for therein is labour and pain. Third, if some infirmity prevents a party from fighting a duel. These three cases are found in Lombarda, Qualiter quis se defendat, etc., l. *quacunque lege* ; and De parricidio, the last law. The fourth is if a slave, who is in the quasi-possession of servitude, claims his freedom ; then the master fights by a champion ; Lombarda, Qualiter quis se defendat, etc., l. *si quis servum propter appetitum*. The fifth is if the person is ecclesiastical ; for instance, where clerks or counts have causes against one another, or against others ; then they fight by champion ; Lombarda, Qualiter quis se defendat, the last law. The sixth is where a woman is accused of adultery ; Lombarda, the same title, l. *si quis uxorem*. The seventh is if the witnesses of the plaintiff contradict the witnesses of the defendant ; then the witnesses of the plaintiff should choose a champion, and the witnesses of the defendant another . . .<sup>(1)</sup> ; Lombarda, the same title, l. *si quis cum altero*. The eighth is if a slave is accused of theft ; Lombarda, De furtis, l. *si servus, dum de furto*. To-day, however, by custom any one is permitted to have a champion.

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*How is a duel to be fought ?*

[Ch. clxxviii.]

We must consider the seventh principal head, namely, how a duel is to be fought.

*How the duel of compurgation is modelled on a contentious trial.*

And here I premise that a duel is modelled on a contentious trial ; for just as in a trial there are plaintiff, defendant, judge, instruments supporting the case, by means of which, taken in the wide sense as including everything which supports the case ; ff. De fide instrum., l. i ; a declaration of the truth is arrived at, so that a definite judgement may be pronounced, so in a duel there are plaintiff and defendant, that is, challenger and challenged, judge, and " instruments," that is, arms, with which the parties strike one another. For just as in a trial one party convicts the other by means of witnesses, documents, and confessions ; De restit. spol., *cum ad sedem* ; so in a duel he convicts him by bodily arms ; and as in the trial one is convicted in the event of condemnation, so in like manner one is convicted in the duel. We must therefore examine this trial by duel, on the analogy of a contentious trial.

*Whether an oath " de astu " should be taken in a duel, and by whom ?*

[Ch. clxxix.]

And first I ask whether an oath " de astu " should be taken, and whether by the challenger and the challenged, or by one of them, and by whom ? Now an oath " de astu " in this trial is the same thing as an oath " de calumnia " in a contentious trial in a civil or ecclesiastical court. And it appears that both should swear an oath. For the oath " de calumnia " is taken in a contentious trial by the plaintiff and the defendant ; C. De iur. calumn., l. i, and l. ii ; and Authent., the same title, *principales* ; Extra., the same title, throughout. So in like manner here, since there is the same reason, there is the same disposition of law ; ff. Ad leg. Aquil., l. *illud* ; C. Ad leg. Falc., the last law ; De constitut., *translato* ; and similar passages. Solution : There have been various opinions on this point, if we regard the Lombard law. One opinion, said to have been that of the Mantuans, was that in this trial by duel an oath " de astu " is taken by both parties, both plaintiff and defendant ; and according to them, all laws which speak of not taking the oath " de astu " are amended. They cite Lombarda, Qualiter quis se defendat, l. *mentio*. But that law has four possible meanings. One, that it refers to conflicting witnesses, that there should rather be a duel than they should perjure themselves. The second, that it refers to two persons claiming to be in possession, that they should fight a duel instead of giving up possession. The third, that it refers to one against whom an oath that he has committed theft has been taken, who wishes to swear the contrary. The fourth, when two persons are litigating before a judge, and one swears that he has taken an oath, and the other wishes to swear the contrary. Their view seems to be disapproved, because the law did not require an oath from the defendant, so that the plaintiff only takes an



oath ; Lombarda, Qualiter quis se defendat, l. *si quis alium astu*. There is an exception when a duel is fought because of a conflict of witnesses ; Lombarda, De testi., the last law ; and Qualiter quis se defendat, l. *si quis cum alio*. A second opinion was that of Carolus Beneventanus, who wished to distinguish between one who comes to the duel in a cause entirely concerning himself, and one who comes in a cause directly concerning another, or concerning another primarily and himself only secondarily. In the first case, as when a man challenges another for theft or arson done to himself, or adultery with his wife, he says it is material to note whether the challenger says, " you have committed," or " I suspect that you have committed." In the first case, he ought to swear that the thing is so. In the second case, he ought to swear that he has a just suspicion ; and when he challenges on grounds of suspicion, he ought to adduce the reason of his suspicion ; for instance, that he saw the man speaking with his wife, and so on. But if a man challenges another to a duel in a cause which concerns another—that is, not for any wrong committed against himself, but for one against another, as when a man challenges on a charge of treason—then, when he comes forward as a witness, he ought to swear that the thing is so, just as a witness takes an oath ; C. De testi., l. *iurisiurandi* ; De testi., ch. *tuis*, and ch. *cum nuntius* ; and similar passages. And so he says that the defendant should swear that the thing is not so. This opinion, so far as it concerns the oath of the defendant, is disapproved, as I showed just now. A third opinion, said to have been that of the Papienses, was, that no oath should be taken by the defendant and the challenged, but only by the plaintiff. As to the plaintiff, this is proved by Lombarda, Qualiter quis se defendat, l. *si quis astu*. As to the defendant, it is proved thus : The defendant is bound to one of two things, either to fight, or, if he refuses, to be condemned. Therefore an oath on his part has no effect, and so should be omitted as superfluous ; C. De appel., l. *ampliolem*, § *in refulatoriis* ; ff. De procuratoribus, l. *non cogendum*, § *Sabinus*. A fourth opinion, which was that of a certain Albertus, was that the plaintiff always takes an oath except on a charge of treason, and when witnesses are in conflict, and on a question of the investiture of an estate. As to the accused, he agrees with the others, except with the Papienses. And I believe it is true that the plaintiff takes an oath as a general rule, except in the cases above mentioned. And the reason is, that the defendant may be compelled to clear himself, although there is as yet no judgement against him ; but the laws indeed require that he should at least be " infamis," and then, if his proofs fail, he is liable to compurgation ; De purgat. canon., throughout ; ii, q. iv, throughout ; De accusat., *qualiter* ii, and this passage should be noted there. So, then, by the Lombard law, which permits a duel in the cases above enumerated, an oath, at least on the part of the plaintiff, should precede ; and the oath should conform to the terms of the challenge, so that, if the challenge asserts a fact, he should swear to a fact ; if a suspicion, he should swear to this, just as a difference is noted between an oath " de calumnia " and an oath " de

veritate," the one asserting belief, the other a fact, as Carolus pointed out. But as to the defendant, I can conceive no reason for an oath being necessary.

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*Whether when one party has a champion in the cases allowed by law, the other party may have one too ?*

[Ch. cxxx.]

Secondly, I ask whether, if one of the parties has a champion, in the cases allowed by the Lombard law, which are eight in number, as I noted above, the other party may then have a champion too. Solution: There have been various opinions on this question. Some authorities say that he may. They cite Lombarda, Qualiter quis se defendat, l. *quicumque*. There is an exception in the case where a slave contends against his master. A second opinion was that the other party may not. The reason given is this: For the law allows a champion in three cases; therefore it refuses it in others; ff. De legi., l. *ius singulare*; ff. Ad municip., l. i; ff. Solut. matrimon., l. *si cum dote*; C. De procur., l. *maritus*; De translatione prælatorum, ch. *inter corporalia*; and similar passages. I think that here we must observe that this trial by duel differs from a contentious trial in this, that in a contentious trial a party is ordinarily represented by another, and for this reason the use of "procurators" was introduced; ff. De procurat., l. i, [and l.] § *usus*; but in a duel the party ordinarily appears in person, and in this a duel resembles a criminal trial, in which a "procurator" does not appear to plead the cause; ff. De public. iudic., the penultimate law, § *qui ad crimen*; and ff. De procurat., l. *servum quoque*, § *publice*; and De accusationibus, ch. *licet*, and ch. *veniens*. And the reason is, that sentence of condemnation cannot be pronounced on the procurator, because he is innocent; nor on the principal, because he is absent; ff. De poenis, l. *absentem*. It is exactly the same in the duel; for duellists fight to overthrow one another, in order that the truth may be elicited by this mode of proof. And so, as a rule, a champion does not appear, except in the permitted cases. If, then, a case arises in which one party has the right to a champion, but the other has not, the former alone will have a champion. But if both parties have the right, they will both have champions, unless we are to say that in order to preserve equality on the two sides, wherever one is allowed a champion the other may have one too; C. De fruct. et lit. expensis, l. *terminato*; De mutuis petit., ch. i, and throughout the title; Sext, De regul. iur., rule *non licet*; and this latter view is more equitable; but the former, which observes the rigour of the law, is more correct.

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*How are champions to be given and assigned in cases where both parties are allowed them ?*

[Ch. clxxxi.]

Thirdly, I ask, How are champions to be given and assigned in cases where both parties are allowed them ? Solution : Here I observe that champions in a trial by duel are like advocates in a contentious court, and so I infer that, just as there ought to be an equal assignment of advocates in a contentious trial ; C. De postul., l. *providendum* ; so there ought to be an equal assignment of champions when both sides are allowed them. But when the principals fight, equality or inequality is not to be regarded, since they conduct their own case to an issue by their own bodily strength.

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*Whether any one may be allowed as a champion ?*

[Ch. clxxxii.]

Fourthly, I ask whether any one may be allowed as a champion. Solution : As was said above, a champion is here like an advocate ; and therefore, just as any one is admitted to plead, unless he is a prohibited person ; ff. De postul., l. i ; so any one is admitted to the office of champion, unless he is disqualified by law. But a thief is disqualified ; Lombarda, Qualiter quis se defendat, l. *si ut campionem*. And the reason is, because he is " infamis " ; ff. De furt., l. *non potest* ; and if he is defeated, it is presumed to be by reason of his own wrong-doing ; so, too, other persons convicted of grave crimes are disqualified for the same reason.

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*In whose election is the duel ?*

[Ch. clxxxiii.]

Fifthly, I ask, In whose election is the duel ? Solution : As a rule, it is in the election of the plaintiff, on the analogy of a contentious trial. See Lombarda, Qualiter quis se defendat, l. *si quis amodo*. There is an exception in a charge of treason, where the plaintiff may be compelled to fight ; and where one has used the expression " arga " ; Lombarda, De publicis criminibus, the last law ; and Lombarda, De iniur. mulier., l. ii.

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*How is the duel to be ordered ?*

[Ch. clxxxiv.]

Sixthly, I ask, how the duel ought to be ordered. Solution : The law does not ordain, but custom prescribes, that a small but ample place should be chosen, in the city or outside ; and this place should be enclosed with ropes,

so that, when the word is given, no one except the duellists may presume to enter, nor to make a disturbance, which might distract one of the parties. And the judge will be there, in a place whence he can see both combatants, and how one meets the other, in order that at the end he may pronounce whether one has been defeated in the duel.

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*With what arms should the duel be fought ?*

[Ch. clxxxv.]

Seventhly, I ask with what arms the duel should be fought. Solution : The Lombard law allows shields and clubs ; Lombarda, De testi., l. *si quis cum altero* ; and Qualiter quis se defendat, l. *mentio* ; and these ought to be equal and presented by the judge.

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*Whether, if the arms or the club of one of the combatants are broken, or fall, others ought to be given him ?*

[Ch. clxxxvi.]

Eighthly, I ask whether, if the arms or the club of one combatant are broken or fall, others ought to be given him. And it seems that they ought. For the text says that the fight is to be with clubs and shields ; Lombarda, Qualiter quis se defendat, l. *mentio* ; and Lombarda, De testi., l. *si quis cum altero* ; but if others should not be given him, it would not be with clubs. Therefore, &c. This is confirmed. For clubs in a duel are like witnesses and documents in a contentious trial ; but in a contentious court witnesses and documents may be produced again, if the testimony of some of them is lost before publication and the making up of the depositions ; Authent., De testi., § *si vero* ; De testi., *fraternitatis* ; and Clemen., the same title, *testibus*. Some authorities agree to this if the arms are broken, but not if they fall ; for then, they say, the mishap should be imputed to the luck of the party. Others say that in no case are fresh arms to be given, but that any mishap is a matter of luck. Others say that the matter depends on custom. I think that the second opinion is true ; that is to say, that other arms should not be given, whether the first set fall, or are broken, unless there is a custom which can operate to the contrary ; ff. De legi., l. *de quibus* ; C. Quæ sit long. consue., l. ii ; dist. xi, *consuetudinis* ; dist. i, *consuetudo*. And the reason is this : For in a duel, as I said at the beginning of the treatise, we sometimes ask for what is contrary to nature, namely, that the less strong and less active of the parties should defeat the stronger and more active ; and this sometimes happens by the intervention of chance. Therefore each of the combatants should be left to submit to the chances to which they have freely exposed themselves ; otherwise the character of the duel of compurgation would be lost. This is confirmed.



For if we should say that new arms should be given, when the old arms fall, then by the like reasoning we should say that a combatant who falls should be raised up, which is absurd. For by these chances it sometimes happens that the stronger is defeated, and herein the judgement of heaven is shown.

*Which of the combatants ought to strike first ?*

[Ch. clxxxvii.]

[ Ninthly, I ask, Who ought to strike first in a duel ? And it seems that the challenger should ; for this trial by duel is like a contentious trial, as I have often mentioned above. But in a contentious trial the plaintiff first delivers his " libel " to the defendant, and the defendant replies later ; C. De lit. contestat., in Authent., *offeratur* ; and De libel. oblatione, ch. i. Therefore, by parity of reasoning, the challenger will first strike the challenged. On the other side is the argument that greater favour is to be shown to the defendant ; ff. De obl. et act., l. *Arrianus* ; ff. De regul. iur., rule *favorabiliores* ; Sext, the same title, rule *in pœnis*. Solution : I think the first view is true, notwithstanding the citations to the contrary, because those laws refer to the end of the trial, when there remains only the definitive judgement ; because then it is true that the defendant should be favoured. But at the beginning the plaintiff is to be favoured ; ff. De iudic., l. *si quis intentione ambigua* ; and ff. De verb. obligationibus, l. *inter stipulantem*. Or we might say that no order is to be observed in this, but that the combatants should be allowed to anticipate one another, or even to strike at the same time.

*Whether a duel not ended on the first day, may be ended on the following day ?*

[Ch. clxxxviii.]

My tenth question is, whether, if a duel cannot be ended on the first day, it may be adjourned to the following day. Solution : I say that it may ; for I say that it should be renewed until it is finished.

*Whether one who fails in a duel is to be condemned to pay costs ?*

[Ch. clxxxix.]

My eleventh question is, whether one who fails in a duel ought to be condemned to pay his adversary's costs. Solution : On the analogy of a contentious trial, in which the vanquished is condemned to pay the victor's costs ; C. De iudiciis, l. *propterandum*, § *sin autem* ; C. De fruct. et lit. expens., l. *terminato* ; De dolo et contum., ch. *finem* ; De pœnis, ch. *calumniam* ; so in the duel we might say, " victus victori," &c.

*Whether, if the challenger fails in a duel, he is to be punished by the penalty of retaliation ?*

[Ch. cxc.]

My twelfth question is, whether, if the challenger fails in a duel, he is to be punished by the penalty of retaliation. Solution: On the analogy of a criminal contentious trial, where the penalty of retaliation is imposed on the accuser if he fails; De accus., ch. *super his*; the same title, ch. *licet*; and C. De accusat., the last law; so in a duel, when it is fought for public vindication, to punish one who has made an accusation.

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*Whether one who has been challenged to a duel on account of an accusation, and has been defeated and condemned, may be charged with the same accusation in a contentious trial ?*

[Ch. cxci.]

My thirteenth question is, whether one who has been challenged to a duel on account of an accusation, and has been defeated and condemned, may be charged with the same accusation in a contentious trial. Solution: It might be said that he may, since the civil law does not approve, but utterly disapproves, of the duel of compurgation; C. book xi, De glad., the single law; and so does the canon law; De pugnant. in duello; and De purg. vulg., throughout; as I have often pointed out above, at the beginning of the treatise. This phrase, "disapproved by law," precludes juridical discussion, and therefore it is no objection to say that the wrongful act of a person is not to be enquired into more than once; ff. Naut. caup. stabul., l. *licet*, at the end; and De accusat., ch. *de his*; because those laws refer to a case in which the former examination and discussion have been juridical, and so we may conclude that an acquittal by duel does not give rise to an "exceptio rei iudicatæ" against one who wishes to bring an accusation in a contentious trial. This is true, unless the custom of the district is to the contrary, so that the Lombard law, for instance, is to be observed, whose disposition I have followed herein; and the solutions of the preceding questions are to be limited accordingly.

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*Whether one who challenges another to a duel on account of a public accusation, and withdraws from the duel, incurs the Turpilian penalty ?*

[Ch. cxcii.]

My fourteenth question is, whether one who challenges another to a duel on account of a public accusation, and withdraws from the duel, incurs the Turpilian penalty. And it seems that he does, on the analogy of a criminal contentious trial; ff. Ad Turpilianum, l. i, § *si quis autem*. Solution: At common law the question would not arise, since the common law disapproves of this mode of trial; see above. But, according to the law which allows it,



we might say that on the same equitable grounds the man should be punished ; and I say that the matter is in the discretion of the judge, since the law is silent ; De offic. iudicis delegat., ch. *de causis*, at the end ; ff. De iur. delib., l. i. But I do not think he incurs the Turpilian penalty, since penalties are not to be enlarged ; ff. De lib. et posth., l. *cum quidam* ; and dist. i, De Pœnit., § *pœnæ* ; Sext, De reg. iuris, rule *in pœnis*. These conclusions, as I said, proceed from Lombard law. For, at common law, one who withdraws from a duel is not punished ; nay, he obeys the law in doing so, and breaks it if he goes on.

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*Whether one who challenges another to a duel by Lombard law may withdraw with the leave of the judge ?*

[Ch. cxiii.]

My fifteenth question is, whether one who challenges another to a duel by Lombard law may withdraw with the leave of the judge. It appears that he may, on the analogy of a prosecutor asking for discontinuance ; ff. Ad Turpil., l. *abolitio*, and l. *si quis interveniente*, and l. *Domitianus* ; C. De abolit., throughout. Solution : At common law this is clear, because he may withdraw without discontinuance, and he does right to do so. By Lombard law, too, I think that the judge may allow it for good reason, on the analogy of a prosecutor, quoted above.

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*Whether one who challenges another to a duel may withdraw without penalty before joinder of issue ? and also when should issue be said to be joined in a duel ?*

[Ch. cxiv.]

My sixteenth question is, whether one who challenges another to a duel may withdraw without penalty before joinder of issue ; and herein I also ask what is the point of time in a duel which corresponds to joinder of issue in a contentious trial. And it seems that he may withdraw before that time without penalty. For before joinder of issue one is not said to be " bringing an action," but to be " intending to bring an action " ; ff. Rat. rem haberi, l. *amplius*. Therefore, up to that time he may withdraw. This is confirmed. For before joinder of issue one who withdraws is excused ; ff. De in ius vocando, l. *quamvis*. Therefore, &c. It is confirmed by C. De adulter., l. *sine metu* ; ff. the same title, l. *miles*, § *socer* ; and ff. Ad Turpilianum, l. *quæsitum*. In the opposite sense is ff. Ad Turpilianum, l. *in senatus*, § *qui post*, where the text proves that one who withdraws from an accusation before joinder of issue is liable to the Turpilian penalty. To the same effect is C. De calumniatoribus, the penultimate law. Solution : This question presupposes the decision of another question, namely, what is the point of time in this trial by duel which corresponds to joinder of issue. And it seems to be after one

blow of the plaintiff, and one of the defendant, because in a contentious trial issue is joined by the claim and the defence which follows it ; C. De iudiciis, l. *rem non novam*, § *patroni* ; C. De litis contestat., Authent., *offeratur* ; and Extra., the same title, the single chapter. But in a duel the first blow takes the place of the claim ; the second, which is by the defendant, is the defence ; and so issue is thus joined. I believe, however, that the true view is, that issue is joined when one party challenges, asserting that the other has committed the crime, and the other denies it. And it is obvious that this is the true view. For the oath " *de calumnia* " is taken after joinder of issue ; Authent., Vt litigantes iurent in exordio litis, at the beginning ; and C. De iureiurando propter calumniam, l. ii. But combatants in a duel take the oath " *de astu* " after this verbal challenge and contradiction, as I showed above. Therefore the duel begins with the verbal proclamation, but the blows correspond to the proofs by witnesses and documents, which come after joinder of issue ; Vt lite non contestata, throughout. And so we must modify the solution of the question in which I asked who should strike first. If we adopt this solution, the principal question becomes a question whether the Turpilian penalty applies before joinder of issue. And the glosses are conflicting. There is one, by Hugolinus, on ff. De adulteriis, l. *si miles*, § *socer*, which holds that it does not apply. There is another, by Azo, on C. Ad Turpilianum, l. i, which holds that it does ; and this I believe to be true, by ff. Ad Turpilianum, l. *in senatus*, § *qui post* ; and C. Quomodo et quando iudex, Authent., *qui semel*. Yet Petrus says that the accuser may change his mind up to the time when the defendant appears after citation ; he so understands ff. Ad Turpilianum, l. *quæsitum*. And in like manner we may reach a solution of the previous question, speaking of the Lombard law, as above. Thanks be to God.

End of the treatise on War, compiled by me, Giovanni da Legnano of Milan, least worthy of the doctors of canon and civil law, in the University of Bologna, in the year 1360, at a time when a strong army lay before the city, which furnished the cause of my treatise, that it might provide a matter of exercise for the students at that time, but be submitted to the correction of the doctors. Thanks be to God. Amen.



## A TABLE OF THE TREATISE

[Ch. i.]

This treatise on War, in its first division, is divided into three principal parts, of which the last is divided into six treatises, and subdivided as will be made clear to you by the table below, which arranges its titles in their order.

### *First principal part.*

What war is, and how it is to be described.

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### *Second principal part.*

[Ch. ii.]

Of the division of war and how it is to be divided.

---

### *The third and last principal part*

*gives the order of the treatises, and is divided into six principal treatises.*

#### *First treatise.*

Of celestial spiritual war.

How celestial spiritual war is the mete and measure of human spiritual war.

Of the natural influence of the spiritual war of celestial bodies on terrestrial wars.

How, according to astrologers and natural philosophers, it is necessary to assume the existence of war.

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#### *Second treatise.*

[Chs. iii-vi.]

Of human spiritual war, according to theology.

[Chs. vii, viii.]

Of human spiritual war, according to moral philosophy.

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*Third treatise.*

[Ch. ix.]

Of universal corporeal war,  
*divided into six treatises**First treatise : On the law whereby it is introduced.*

[Ch. x.]

How universal corporeal war had its origin in divine law.

[Ch. xi.]

How universal corporeal war had its origin in the law of nations.

*Second treatise of the third principal treatise : On who may declare universal war.*

[Chs. xii-xiv.]

Who first and chiefly may declare universal war, and by what law, and against whom ?

[Ch. xv.]

Whether war made by the Emperor against the Church is lawful, and whether subjects are bound to obey him therein ?

[Ch. xvi.]

What, on the other hand, is the law, when the Pope makes war against the Emperor ?

*Third treatise of the third principal treatise : Of the means of making war.*

[Ch. xvii.]

Of the legion and the cohort, and who and how many are required therein.

[Ch. xviii.]

How soldiers should conduct themselves in war, whom they should obey, and from what they are commanded to abstain.



[Ch. xix.]

What belongs to the office of a general in war ?

[Ch. xx.]

How soldiers are punished differently, according to their different offences.

[Ch. xxi.]

Of fortitude and its nature ; and when fortitude is to be called moral, and when not ; and when fortitude conducts war to a right end, and when not.

[Ch. xxii.]

Whether fortitude is a cardinal virtue ?

[Ch. xxiii.]

Why, and in what sense, the four principal virtues are called cardinal.  
What is virtue ?

[Ch. xxiv.]

Of the threefold species of good, and how the four cardinal virtues are derived from the good.

[Chs. xxv, xxvi.]

How, and in what sense, a man may be called brave in war.

[Ch. xxvii.]

Which is the chief act of fortitude ?  
How many kinds of fortitude are practised in war ?

[Ch. xxviii.]

Whether a brave man in war ought to await death rather than to flee ?

[Ch. xxix.]

Whether a soldier should be punished with death, who bravely charges the enemy with his company, and utterly routs them, contrary to the commands of the general ?

[Ch. xxx.]

Whether quarter should be granted to the general of a war, when captured by the enemy ?

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*Fourth treatise of the third principal treatise, divided into two principal parts.*

*First part: Who are bound to participate in a war?*

[Ch. xxxi.]

Whether vassals are bound to participate in a war at their own expense when a lawful war is begun by their lord?

[Ch. xxxii.]

Whether the subjects of a baron, who begins a war against his king, are bound to help the baron against the king?

[Ch. xxxiii.]

Whether subjects are bound to help first a baron who begins a war against another baron, or the king who begins a war against another king, both commands being received at the same time?

[Ch. xxxiv.]

Whether the non-liege vassal of two lords is bound to help both, or one, and if so, which?

[Ch. xxxv.]

Whether a vassal is bound to help his lord against his father, or a father against his son?

Whether a citizen of two states is bound to help one against the other?

[Ch. xxxvi.]

Whether a vassal summoned by his lord is bound to follow him in parts beyond the sea, to fight against barbarians?

[Ch. xxxvii.]

Whether slaves are bound to follow their lord to war everywhere?

[Ch. xxxviii.]

Whether freedmen, when summoned, are bound to follow their patron to war?

[Ch. xxxix.]

Whether cultivators, when summoned, are bound to follow their lord to war?

[Ch. xl.]

Whether a lord may summon those who are allied or leagued with him to help him in war?

[Ch. xli.]

Whether those who are subjects by reason of jurisdiction only are bound to participate in war?



*Second part : Of persons not bound to participate in war, who do so voluntarily ;  
divided into six principal parts.*

*First part : Of those who participate voluntarily.*

[Ch. xlii.]

Whether those who voluntarily participate place him in whose service they go under an obligation to themselves, if they incur loss thereby ?

[Ch. xliii.]

Whether a borrower is liable to the lender to replace horses and arms lost in war ?

[Ch. xliv.]

Whether a hirer is liable to a letter to replace horses and arms lost in war ?

[Ch. xlv.]

Whether, if one man summons another to a war, and the other is robbed on his way to the war, the summoner can sue the robber by the " actio vi bonorum raptorum," or the action of theft ?

[Ch. xlvii.]

Whether those who are not summoned, but participate in a war of their own motion, place him in whose service they go under an obligation to themselves ?

[Ch. xlviii.]

Whether those who are not summoned, but participate in a war of their own motion, and make an effective start, place the person in whose service they go under an obligation to themselves, though he objects to and forbids their going ?

*Second part : Of those who participate because they are bound to return a service.*

[Ch. xlviii.]

Whether such a person has an action against the person whom he helps ?

*Third part : Of those who participate for the sake of winning glory.*

[Ch. xlix.]

Whether such persons place the person to whose assistance they go under an obligation to themselves ?

*Fourth part : Of those who participate because they let out their services.*

[Ch. l.]

Whether such persons have an action against their hirers ?

*Fifth part : Of those who participate with the intention of getting booty.*

[Ch. li.]

Whether an action is competent to such persons ?

*Sixth part.*

[Ch. lii.]

Whether clerks may participate in a war ?

Whether mercenaries enlisted in Germany at a fixed salary by one who hires them, have an action against one who, while they are on the way, has absolutely lost his status ?

[Ch. liii.]

Whether mercenaries enlisted in Germany by an Italian city, at a fixed salary yearly, may bring an action for their whole salary, or for a rateable part, or for what, if the city is seized by a tyrant, while they are on the way to it ?

[Ch. liv.]

Whether mercenaries ought to be paid at the beginning of a month, or at the end ?

[Ch. lv.]

Whether mercenaries who absent themselves, even with the licence of their lord, for a time, lose their salary for that time ?

[Ch. lvi.]

Whether, if mercenaries wilfully refuse to serve the whole time of their engagement, they lose their pay for the whole time, or only for the time which they have not served ?

[Ch. lvii.]

Whether mercenaries may serve by a substitute ?

[Ch. lviii.]

Whether a mercenary loses his pay during the time when he is ill ?

*Fifth treatise of the third principal treatise : Of spoils and captives made in war.*

[Ch. lix.]

Whether one who makes a capture in war, becomes owner of the person or thing captured, and whether the doctrine of " postliminium " applies ?



[Ch. lx.]

Whether persons captured in a war between two states become slaves, and whether ownership is acquired over them ?

[Ch. lxi.]

Whether things captured in war become the property of the captors ?

[Ch. lxii.]

Whether the use of trickery is allowed in wars ?

[Ch. lxiii.]

[*Desunt verba* : Whether it is lawful to make war on feast days ?]

[Ch. lxiv.]

Whether one who has recovered in a war the whole of his loss, may still bring an action against his adversary, or again declare war against him ?

[Ch. lxv.]

Whether those who die in war are saved ?

[Ch. lxvi.]

Whether it is lawful to wage corporeal war on behalf of the property and possessions of the Church, and for this purpose to assemble troops ?

[Ch. lxvii.]

Whether bishops may go to war without the licence of the Pope ?

[Ch. lxviii.]

Whether prelates are bound to pay tribute for the temporalities which they hold from the Emperor, for wars declared by him ?

[Ch. lxix.]

Whether mercy should be shown to persons captured in a lawful war ?

[Ch. lxx.]

Whether the Church should declare war on the Jews ?

[Ch. lxxi.]

Whether those who follow a war, but cannot fight, enjoy the immunities of combatants ?

[Ch. lxxii.]

Whether prelates may declare wars, and take part in them, and encourage others to war, by reason of their temporal jurisdiction ?

[Ch. lxxiii.]

Whether a prelate may declare war for an injury done to his subject, which is unpunished, and capture persons other than the wrong-doers ?

[Ch. lxxiv.]

Whether the Pope's delegate may declare war ; that is to say, invoke the secular arm ?

[Ch. lxxv.]

Whether wars declared by the Church against excommunicated persons are meritorious ?

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*Sixth and last treatise of the third principal treatise, in the form of a table : On how many are the kinds of corporeal wars which are recognized in law.*

[Ch. lxxvi.]

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*Fourth treatise of the third principal part : Of particular war which is waged in self-defence, divided into eight principal parts.*

[Ch. lxxvii.]

*First part.*

[Ch. lxxviii.]

What is particular war ?

*Second part.*

[Ch. lxxix.]

How many are the kinds of particular war ?

*Third part.*

[Ch. lxxx.]

By what law particular war was introduced.

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*Fourth part :*

[Ch. lxxxi.]

*Who may declare this particular war ?*

[Ch. lxxxii.]

Whether clerks may declare this war ?

[Ch. lxxxiii.]

Whether, since a clerk may defend himself, even by killing another, he may do this in a church ?

[Ch. lxxxiv.]

Whether a clerk, attacked in the act of celebration, may defend himself, and kill his assailant, and so continue to celebrate the office ?

[Ch. lxxxv.]

Whether one who is attacked while baptizing, anointing, confirming, ordaining, or celebrating the several sacraments may postpone their celebration, though begun ?

[Ch. lxxxvi.]

Which is to be preferred, the death of a priest who is attacked while he is baptizing a child at the point of death, or the eternal life of the child, lest he should die without baptism ?

[Ch. lxxxvii.]

Whether a monk may defend himself without the licence of his abbot ?

[Ch. lxxxvii bis.]

Whether a slave may defend himself without the command of his master ?

[Ch. lxxxviii.]

Whether persons outlawed, who may sometimes by municipal laws be killed with impunity, may defend themselves ?

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*Fifth part :**Against whom may this particular war be declared ?*

[Ch. lxxxix.]

Is it lawful against a superior ?

[Ch. xc.]

Is it lawful against a judge, even if he acts unjustly ?

[Ch. xci.]

Is it lawful for a son against a father ?

[Ch. xcii.]

Is it lawful for a monk against an abbot ?

[Ch. xciii.]

Is it lawful for a slave against a master ?

*Sixth part :**For what causes is it lawful to declare this particular war ?  
divided into two principal parts.*

[Ch. xciv.]

*First part : On behalf of what persons is it lawful ?*

[Ch. xcv.]

Is it lawful for a father on behalf of his son ?

[Ch. xcvi.]

For a husband on behalf of his wife ?

[Ch. xcvii.]

On behalf of a brother, sister, and other relations ?

[Ch. xcviij.]

Whether a man is bound to defend another against being killed by a third ?

[Ch. xcix.]

Whether a vassal is bound to help his lord ?

[Ch. c.]

Whether a slave is bound to defend his master ?

[Ch. ci.]

Whether a soldier is bound to defend his officer ?

[Ch. cii.]

If a vassal sees his lord attacked on one side, and his father on the other, each being equally in mortal danger unless he is helped, and the vassal can only help one of them—the question is, Whom should he help ?



[Ch. ciii.]

The same subject continued : What is the law if a clerk sees his bishop violently attacked on one side, and his father on the other, each being equally in mortal danger unless he is helped, and the clerk is able to help only one of them—the question is, Whom should he help ?

*Second part : For what things is it lawful ?*

[Ch. civ.]

Whether it is lawful in defence of things lawfully possessed ?

[Ch. cv.]

In defence of things unlawfully possessed ?

[Ch. cvi.]

Whether one who has a right to defend property, and defends it within the limits of justifiable defence, incurs irregularity, if he kills or wounds another ?

[Ch. cvii.]

Whether a man incurs excommunication by laying hands on a clerk, in defending his own property ?

[Ch. cviii.]

Whether one may summon one's friends to help in defending one's property ?

[Ch. cix.]

Whether, in defending property, one may repel force with force against all those against whom one may use force in defending persons ?

[Ch. cx.]

Whether one may repel force with force in defending things deposited or lent ?

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*Seventh part :*

*How may this particular war be declared ?*

[Ch. cxii.]

Whether it is lawful within the " limits of justifiable defence " ?

What are the " limits of justifiable defence," and what is required therein ?

[Ch. cxiii.]

Whether a poor and feeble man may defend himself with a sword, against a strong and vigorous man who strikes him only with the fist ?

[Ch. cxiii.]

If a man may defend himself "incontinenti," in what sense is the phrase "incontinenti" to be understood?

[Ch. cxiv.]

What is the meaning of "equivalence in the act of violence itself"?

[Ch. cxv.]

Am I deemed to have acted vindictively, and not defensively, if I have expelled my despoiler from my possession, when he first offered to give security for the restoration of possession?

[Ch. cxvi.]

Whether I ought to await one who is prepared to strike me, or to anticipate him?

[Ch. cxvii.]

Whether a soldier, attacked by his neighbour, is deemed to repel force with force, if he waits for him, and strikes him, although he might run away?

[Ch. cxviii.]

If a wounded man, after the wounds have been inflicted, pursues his assailant, and strikes him, which is not lawful, should he be punished as "malicious," or as "culpable"?

[Ch. cxix.]

Whether violence to the person may be repelled by friends, like violence to things?

[Ch. cxx.]

Whether a slave is to be excused, who kills his master's wife on the order of his master?

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*Eighth and last part of the fourth treatise of the third principal part.*

[Ch. cxxi.]

What is the end of particular war?

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*Fifth treatise of the third principal part,*

[Ch. cxxii.]

*Of particular war waged in defence of the mystical body, which is called "Reprisals,"*

*and this treatise is divided, in its first division, into two principal parts.*



[Ch. cxxiii.]

*The First part sets out whence, and in what, reprisals had their origin.*

[Ch. cxxiv.]

*Second part : Of the causes of reprisals. Of the productive or efficient cause of reprisals.**Third part : Of the material cause, divided into four principal parts.**First part : Of the " matter in which."*

[Ch. cxxv.]

What is the " matter in which " ?

What is the " matter about which " ?

What is the " matter against which " ?

What is the " matter from which " ?

To what persons is the power of taking reprisals to be granted ?

Are reprisals to be granted to residents ?

[Ch. cxxvi.]

Whether reprisals should be declared for citizens who are not subject to the jurisdiction of a state, and are otherwise not part of it ?

[Ch. cxxvii.]

Whether reprisals should be granted to a citizen " by convention," against the state of his origin ?

[Ch. cxxviii.]

Whether limited reprisals should be granted to citizens, and to those who are regarded as citizens ?

[Ch. cxxix.]

Whether a state may grant reprisals to the citizens of another state, who by agreement or statute are treated as its own citizens ?

*Second part : Of the " matter about which."*

[Ch. cxxx.]

Whether reprisals can be declared against the property of those whose persons cannot be seized on the strength of reprisals ?

[Ch. cxxxi.]

Whether reprisals, simply declared, can be executed against property in the territory of the state against which they are declared, so that it may be seized and brought within the territory of the state declaring them ?

[Ch. cccxii.]

Whether, if one state declares reprisals against another, the ruler of the state declaring them, on writing to the ruler of the state against which they are declared, can execute the reprisals on property there situated ?

*Third part : Of the " matter against which."*

[Ch. cccxiii.]

Whether, if one state has declared reprisals against the men of another state, they can be executed against residents of that state ?

[Ch. cccxiv.]

Whether, if one state has declared reprisals against the men of another state, they can be executed against men of that state living elsewhere ?

[Ch. cccxv.]

Whether reprisals can be executed against the citizens or residents of a state, who are subject to its burdens, but are also citizens of another state ?

[Ch. cccxvi.]

Whether reprisals can be executed against women<sup>(7)</sup> ?

[Ch. cccxvii.]

Whether reprisals can be executed against unmarried clerks, and also whether they can be executed against married clerks ?

Whether, when a bishop neglects to do justice on his clerks, and recourse cannot be had to his superior, reprisals can be declared against the same clerks by a secular judge ?

[Ch. cccxviii.]

Whether reprisals can be executed against Bolognese students, or even against other students of Bologna, on their way to Padua for study ?

[Ch. cccxix.]

Whether reprisals can be executed against ambassadors ?

[Ch. cxl.]

Whether reprisals can be executed against those who are going to a festival, to the Church of St. James, or to other place of indulgence ; also whether they can be executed against those at sea, and against those who cannot be summoned into court, and in many other cases ?

[Ch. cxli.]

Whether reprisals can be granted against a Bolognese magistrate of Milan, who does injustice there ?



[Ch. cxlii.]

Whether reprisals can be declared against the officials of a magistrate or ruler who does injustice ?

[Ch. cxliii.]

Whether reprisals can be declared against the consuls and the leaders of a state who refuse to do justice ?

[Ch. cxliv.]

Whether reprisals can be declared against private persons, who are absolutely innocent, because of an offence of their lord, or of another private person, for which justice is not done ?

[Ch. cxlv.]

Whether reprisals can be declared against persons who are partially, but not fully, subject to a state ?

[Ch. cxlvi.]

Whether reprisals can be declared against a certain class of persons who refuse to do justice ?

[Ch. cxlvii.]

*Fourth part : Of the " matter from which," which arises from a failure of jurisdiction, because a judge ought first to be appealed to, before reprisals are granted.*

[Ch. cxlviii.]

Whether a judge ought to be required to do justice, before reprisals are granted ?

[Ch. cxlix.]

Whether, when a man who suffers an injury dares not litigate in the state of the person inflicting the injury, his own judge may write, asking to have the jurisdiction transferred to others, or arbitrators chosen ?

[Ch. cl.]

What judge ought to be required to do justice ?

[Ch. cli.]

What degree of injustice is required, before reprisals will be granted ?

[Ch. clii.]

When is it to be said that resort to a superior is impossible, so that an occasion arises for the declaration of reprisals ?

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*Fourth principal part : Of the formal cause, divided into two principal parts.*

[Ch. cliii.]

*First part : Of the form of declaring reprisals.*

[Ch. cliv.]

Who may appear, to oppose the declaration of reprisals ?

[Chs. clv, clvi.]

How the commission of injustice, or the denial of justice is to be proved

[Ch. clvii.]

Whether, if property is seized on the strength of reprisals, it may be detained, by virtue either of the first decree, or of the second ?

*Second part : Of the form of executing reprisals.*

[Ch. clviii.]

Whether one to whom reprisals are granted may execute them on his own authority, or by the servants of the magistrate granting them ?

[Ch. clix.]

Whether one who seizes persons and property is bound to present them to the judge, or may retain them for himself ?

[Ch. clx.]

Whether property seized on the strength of reprisals should be sold, or whether it should be accepted in payment, or be valued ?

[Ch. clxi.]

Whether a declaration of reprisals can be executed on holidays ?

[Ch. clxii.]

If a man wishes to defend himself, or property seized, what jurisdiction should be invoked ?

[Ch. clxiii.]

Whether the person from whom the exaction is made has a remedy against the person for whose debt or wrong it is made ?

[Ch. clxiv.]

Whether the person from whom the exaction is made has a remedy against the ruler, as well as against the principal debtor ?

[Ch. clxv.]

Whether a person seized on the strength of reprisals may, on his own authority, seize persons belonging to the state in which he was seized ?



[Ch. clxvi.]

Whether reprisals can be granted by statutes, in cases not permitted by law ?

Whether a statute of a state, which ordains that a son is liable for the wrong of his father, can be executed against a son living outside the territory of that state ?

[Ch. clxvii.]

Whether it may lawfully be agreed that one person is to be liable for another ?

---

*Sixth and last Treatise of the third principal part of this work : Of " Particular " war waged for compurgation, which is called " the Duel ", divided, in its first division, into seven principal parts.*

[Ch. clxviii.]

*First part.*

[Ch. clxix.]

What is a duel ?

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*Second part : How many kinds of duel are there ?*

[Ch. clxx.]

How a duel is fought for exaggeration of hatred.

How a duel is fought to win public glory.

How a duel is fought for the compurgation of an accusation.

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*Third part : By what law is the duel permitted, and by what forbidden ?*

[Ch. clxxi.]

How the duel which is fought for exaggeration of hatred is introduced by natural law, in the sense of an instinct of nature, proceeding from sensuality towards some desired object.

[Ch. clxxii.]

How the duel which is fought for exaggeration of hatred is forbidden by natural law, in the sense of rational intelligence, and so by the law of nations, and by divine law, canon law, and civil law.

[Ch. clxxiii.]

How the duel which is fought for the sake of glory is introduced by natural law, in the sense of an instinct of nature proceeding from sensuality.

[Ch. clxxiv.]

How the duel which is fought for the sake of glory is forbidden by divine law.

How the duel which is fought for the sake of glory is forbidden by the law of nations.

How the duel which is fought for the sake of glory is forbidden by canon and civil law.

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*Fourth part : For what reason is the duel of compurgation permitted, and for what is it forbidden ?*

[Ch. clxxv.]

How the duel of compurgation is forbidden by divine law.

How the duel of compurgation is forbidden by the law of nations.

How the duel of compurgation is forbidden by canon law.

How the duel of compurgation is forbidden by civil law, as a general rule.

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*Fifth part : In what cases is the duel of compurgation permitted ?*

[Ch. clxxvi.]

How the Lombard law permits the duel of compurgation in twenty cases.

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*Sixth part : Between whom may a duel be fought ?*

[Ch. clxxvii.]

How the duel of compurgation should generally be fought between principals.

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*Seventh and last part : How is a duel to be fought ?*

[Ch. clxxviii.]

How the duel of compurgation is modelled on a contentious trial.

[Ch. clxxix.]

Whether an oath " de astu " should be taken in a duel, and by whom ?

[Ch. clxxx.]

Whether, when one party has a champion in the cases allowed by law, the other party may have one too ?



[Ch. cxxxix.]

How are champions to be given and assigned in cases where both parties are allowed them ?

[Ch. cxxxix.]

Whether any one may be allowed as a champion ?

[Ch. cxxxix.]

In whose election is the duel ?

[Ch. cxxxix.]

How is the duel to be ordered ?

[Ch. cxxxix.]

With what arms should the duel be fought ?

[Ch. cxxxix.]

Whether, if the arms or the club of one of the combatants are broken, or fall, others ought to be given him ?

[Ch. cxxxix.]

Which of the combatants ought to strike first ?

[Ch. cxxxix.]

Whether a duel not ended on the first day may be ended on the following day ?

[Ch. cxxxix.]

Whether one who fails in a duel is to be condemned to pay costs ?

[Ch. cxxxix.]

Whether, if the challenger fails in a duel, he is to be punished by the penalty of retaliation ?

[Ch. cxxxix.]

Whether one who has been challenged to a duel on account of an accusation, and has been defeated and condemned, may be charged with the same accusation in a contentious trial ?

[Ch. cxxxix.]

Whether one who challenges another to a duel on account of a public accusation, and withdraws from the duel, incurs the Turpilian penalty ?

[Ch. cxciii.]

Whether one who challenges another to a duel by Lombard law may withdraw with the leave of the judge ?

[Ch. cxciv.]

Whether one who challenges another to a duel may withdraw without penalty before joinder of issue ? Also whether, and when, issue should be said to be joined in a duel ?

End of the Table to the book of the treatise on War of Giovanni da Legnano. Thanks be to God. Amen. Amen. Amen.

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# TRACTATUS

De Bello, De Represaliis et De Duello  
Domini Iohannis de Lignano,  
cum additionibus Domini Pauli de Lignano

---

Impressus Bononiae, ad instantiam Sigismundi de libris, per me  
magistrum Henricum de Colonia, xvi die Kal. Ian., Anno  
a Domini incarnatione millesimo quadringentesimo  
septuagesimo septimo.  
Laus Deo

(See the Editor's Prefatory Note which follows)





## PREFATORY NOTE

THE pages which follow are a reproduction by the Oxford University Press of Giov. da Legnano's work, as first printed, in 1477, with many omissions and interpolations due to its editor, Paolo Antonio da Legnano, great-grandson of the author.

The original is included in a rare volume, having no general title-page, for the loan of which I was indebted to All Souls College, containing eighteen legal treatises, dating from 1477 to 1493, by various authors. The first of these treatises, printed at Milan in 1483 by Elldericus Sinzenzeler, is headed by the words: "*Clarissimi iurisconsulti D. Lanfranchi de Orianò solennis utilis quotidianus et practicabilis tractatus de Arbitris. Additis multis aliis questionibus clarissimorum doctorum.*"

T. E. H.





Tractatus de bello. de Represaliis ⁊ de  
Duello domini Johannis de Lignano cū ad  
ditionibus domini Pauli de Lignano.

### PROHEMIUM.

EX YSRAEL MO-  
TAVI HABITUM  
ET PATRIMONIUM  
EST BELLUM ꝛc.

In regum xxi. c. ysaia.  
est solium domini. Et ut

scribitur yherem. in capi. uocabunt ysaia solium domini. ⁊ hoc est patrimonium sancte  
Romane ecclesie cuius caput est yerusalem  
id est alma Ciuitas Bononie que uere uo-  
cari potest yerusalem. Nam in ipsa quorum-  
cūq; scibillum maxime iuris dilucidata est  
ueritas. De hoc scribitur zacharie viii. c. no-  
cabitur yerusalem Ciuitas ueritatis. hec for-  
mosa sicut yerusalem canti. vi. ca. de hac eti-  
am clamat propheta iohi. i. ca. scrutator ye-  
rusalem in luce ⁊ actus v. ca. replesti yere-  
salem doctrina nostra. Et de hac etiā scribi-  
tur apoca. xxi. c. audi Ciuitatem sanctā ye-  
rusalem ⁊ ibidem xxi. ostēdit mihi ciuitatē  
sanctam yerusalem descēdentē de celo. i. bo-  
noniam ⁊ uere de celo descendit cū ibi fons  
ueritatis iurii que adeo per ora principum  
pulgatur viii. di. quo iure. C. de lon. tēp.  
prescrip. l. penulti. de hac scribit apus ad e-  
breos xiii. c. Ciuitas dei uiuentis. yerusale cele-  
stem. Et idē apus ad gala. iiii. c. Que aut  
furiū ē yerusalem libera est. de hac etiā scri-  
bitur palipo vi. ca. Elegi yerusalem ut ibi so-  
ret nomen meū. ueram etenim pmittente altis-  
simo ⁊ superius disponentibus corporib; hec  
ciuitas Bononie ut yerusalem ad extremum  
mutata est ⁊ de uisitata ⁊ propter in habitā-  
tium delicta in mueria odia mutua domini  
cominatus est altissimus ipius otractionem  
ut scribitur iudici xix. c. delebo yerusalem  
sicut ceteri solent tabule de insidiis in habitā-  
tium scribitur xxi. palipo. xxv. c. descende-  
runt insidie in yerusalem ⁊ ppter superbiam  
in habitantium cominatus est per prophetas  
dicentē cōputescere faciam superbiam iuda-  
⁊ superbiam yerusalem multā yere. xiii. ca.  
Et propter hoc clamat propheta propter in-  
habitantes dicens dabo yerusalem maternos  
barene ⁊ alibi propter hoc clamat propheta  
dicens ponam yerusalem quasi acerui lapidū  
mihic. i. ca. Et propter hoc clamat propheta  
contra nutrices in. ca. dicens cōtristatis ye-  
rusalem nutricem uestram. baruth. quarto.  
Et ppter hoc si inhabitantii excessus facti  
est ut exercitus babilonie regnum obsiderat  
yerusalem yere. xxi. c. ⁊ p hoc facti est qd  
scribit ezechiele v. c. ⁊ est yerusalem in medio  
gentium. i. hostium pene tamen factum est ⁊  
etiā quod scribit trenaq. i. c. facta ē yere-  
salem sicut palata. Alma igit ciuitas Bo-

nie uere yerusale nuncupatur ⁊ caput solii.  
primoniū sēc. Rōe eccle. Rex aut actu regēs  
⁊ gubernans est reuerendissimus in crīsto pꝛ  
⁊ dñs. dominus egidius miseratione diuina  
Sabiniē. epūs. hic ēt mutauit habitum ⁊ in-  
gressus est bellum. Nam de trona pacifico. i.  
sacratissime collegio Cardinalium ⁊ o latere  
dextro sanctissimo pape Inno. vi. destinatus  
est ad recuperationem yerusalem. i. patrimonii  
penitus deperditi ⁊ in ipsius recuperatione  
mutauit habitū. Nam relicta pōtifi cali gete i  
gressus est bellum ⁊ bellum forte ut princeps  
strēnuissimus. Nam ante ipsum non erat  
rex in yerusalem ut scribit. xxi. c. In dieb;  
illis non erat rex ⁊ ppter hoc dixit dñs ad eū  
s. dñm Egidium misi te regem sup populum  
dñi. Iudit. ix. c. Et ipse dicere pōt. Ele-  
git me dñs ut essem rex pmo p alipo. xxiii.  
c. Et iste rex surrexit de solio dñi. Jo. iiii. c.  
Et bene ingressus est bellum ⁊ feliciter. Naz  
ut aliat. duplr. s. lūme prudentie ⁊ fortitudis  
inclite oia lura sacre sancte ecclesie Romane  
tirānde usurpate de nihilo pduxit ad esse o  
tenebris ad lucem ut dici possit qd de nihilo  
aliquid fecerat gen. i. ca. ⁊ lūmcs in pin. C  
de rei uro. act. Uere igit ⁊ Rex ysaia mu-  
tauit habitum ⁊ ingressus est bellum. Quia  
igit rex ysaia. i. patrimonii ⁊ que sit ut. s.  
dictum est de extremo ad extremū deduc-  
ta mutauit habitum ⁊ ingressus est bellum ⁊  
hec diebus nostris ymmo ut pendet satis ui-  
dei incōgruum hec sub silentio penitus pꝛā  
lire. Idcirco ego Johannes de lignano de Bo-  
nonia mim? iter ceteros iuris utriusq; doc-  
tōes ad uos pꝛatum dñz meum dñz egidium  
o albornocio o citate pꝛāsi misatōe dina epꝛ  
Sabiniē. in partibus ytalie pro sancta rōa  
ecclesia uicarium generalem ⁊ uerum regem  
yerusalem transmittendo cōcepi tractatum  
facere de yerusalem ⁊ de ciuitate Bononie.  
⁊ de illo quod mutado estis ingressus hoc or-  
dine. nam de ciuitate Bononie ponaz sex cau-  
sas implicantes que acriter contingerunt di-  
ctam ciuitatem. A. Mille. ccc. l. usq; ad  
Mille. ccc. lx. maxime que insurrexit domi-  
ni mutatio. ⁊ cā quorumcūq; tēporum ⁊ o  
spectibus annorum contra meridies dierum  
quibus hec contigerunt nō autem horarum.  
⁊ hec appono. qz in aliquibus tractatibus in-  
tēdo iuris metas excedere. explicādo aliquas  
que forte euenient ⁊ cuilibet ca. sē sub mate-  
ria unum tractatum uel plures ut occurrēt  
aliquos tractatus transibo sub silentio aliquos  
explicādo. unum soli nunc publicabo uide-  
licet tractatum de bello promittens domino  
ānuente singulos tradere explicatos tempo-  
re cōgruo ⁊ causa cessante ibitionis. Sup-  
plicans eidem reuerendissimo. p. ut imbeci-  
litate intellectus supportare dignetur. ⁊  
hoc ut modicum sulcipe exordium corrigen-  
di si placuerit ⁊ reformandum iuxta gētiliū  
sapientie autorem. Exiguam munus ꝛc. Tu

pondera cum hanc meo Bono. vocat perusalem q̄ perusalem hic capitur pro ciuitate sed esto nō inficiat q̄ per quatuor sensus sine intellectus sacra scriptura exponitur p̄ historicam per quē res ad litteram gesta recitatur per allegoricam per quem alius ab alio sumitur intellectus per tropologicam et moralem per quem mores oriantur per anagogicam cum ab ana quod est sursum per quē celestia alcēdimus. perusalem ergo secundum historicam est ciuitas. ut in hoc tractatu capitur secundum allegoricam scripturam. sancta ecclesia connotatur secundum tropologiam significat quilibet fidelem aiam secundum anagogicam significat curiā celestem. Hoc voluit hosti. Jo. an. 7. d. ant. in. c. i. in. §. i. de sacra unctione et de singulis ibi allegantur iura ut de glo. in. ca. ieiunium lxxvi. di. 7. glo. in. c. nonne xxxvii. di. Tu pondera nimirum si proxima mea dicit q̄ Bono. descendit de celo cum bononie docentur iura que a deo p̄ bona principum promulgantur. Nam instinctu spiritus sancti inuenti sunt canones. ca. uolutores xxv. q. 1. c. si. ca. q. 7. cā. c. si quis diuconus. l. di. 7. in ca. si ille. di. per d. abb. in. c. in ciuitate de usuris cum leges que appellantur sacratissime ibi manifestentur. l. leges C. de legibus. 7. sacratissime sunt. l. l. ff. de uariis 7. exordi. pgn. 7. bononie nota reddant iura per quorum interpretationem mandata illuminantur 7. ad obediendum deo 7. eius ministeris uita subiectorum informantur ut i autem hita. C. ne filius pro patre 7. per abb. in. c. si. in si. bononie etiam dona dei scilicet ut legantur leges que sunt dona dei ut nota. in l. i. ff. de legibus 7. per abb. post doc. in. c. quia de magistris in. d. c. ille nos de pigno. Nam etiam bononie manifestantur 7. declarantur mandata diuina. c. de quibusdam xxxvii. di. possemus per herculem alle. de legali sciētia illud quod per ciceronem scribitur sua iocatione pro uolo licinio archia. poeta. Nam cetera res neq; temporum sunt. neq; etati omnium. neq; locorum hec studia adolescentia agant senectutes oblectant proprias res ornant aduersa profugium atq; solacium prebent delectant domi. non impediunt foris pernoctant nobiscum. peregrinantur. rusti cantur.

#### Capitulum primum.

Tractatu belli sic procedam. primo ponam descriptionem belli humani deus precipaliter tractaturus in genere. Secundo diuidā bellum per membra. Tercio prolequar singula membra. Bellum sic describitur. Bellus est cōtēptio exorta ppter aliqd̄ dissoni appetitui biano ppolui addisoniā excludēdā tēdēs dixi contentio hoc ponit ut genus Nam 7. sub se continet 7. bellicam cōtēctionē 7. alias qualicūq; ut. l. i. l. i. q. 5. si. de aqua plu. arce

dixi ppter dissonum 7. est causa unde oritur contentio dixi appetitui biano ad biam biano dixi ad dissonantiam 7. c. 7. ista est causa finalis cuiuslibet belli. Nam quilibet belli tenet finaliter ad tollendam displicentiam quod fuit belli introductoria 7. sic fuit bella ppter pacem. xxi. q. i. noli. Uultum riu soluat pax mea cum nemo docetum qd sit belli nullus fuerit diffinire tamē bal. i. l. unica. C. de cadu. tollen. dicit q̄ bellum est p̄ditio aie 7. corporis allegat glo. in. l. i. C. ut publice letitie li. xii. sed hec q̄ba potius sonat in effectu belli q̄ in diffinitionem belli. Tu pondera q̄ bellum possit sic diffiniri non tamen spreta diffinitōe paui mei bellum est quedā animi generositas orta ad iniuriam p̄pellandā uel ad uindictam inferendam ar. tex. xxiii. q. i. in summa. In quo autē paui meus dicit q̄ sunt ppter pacem bella adde Tullium de officiis li. i. p̄dicatē quare suscipiēda bella sunt egdem ob eam cām ut sine iniuria i pace uiuāt.

#### Cap. ii.

Secundo bellum sic diuidit bellū aliud spiale aliud tpale. Spiale aliud celeste aliud humanum Spirituale celeste est q̄ quo habet Job. xiiii. Humanum est de quo scribit ad rom. vii. Ibi uidet aliam legem repugnantem legi mētis mee vi. d. i. c. testamentum. Corpale aliud est uniuersale aliud pticulare de uniuersali habetur. ff. de capti. 7. postil. querit q̄ p totum 7. xxiii. q. i. 7. xxii. Particulare aliud est ob tutelam corporis sui 7. reꝑ. 7. de hoc habet. ff. de ni 7. ui ar. l. i. §. vlm vi. ff. ad. laquil. l. sciam. §. qui cum aliter 7. l. i. C. unde vi. 7. c. olim de resti. spolia. 7. in clem. si furiosus 7. homicid. Aliud sit ob tutelam corporis mīfici uel eius ptis ppter defectum iurisdictionis que rep̄salie nuncupant de quo in aut. ut non fiant pignoraciones 7. de iur. c. i. li. vi. Aliud sit ppter contematiā resistētium iurisdictioni iudicis de quo in. l. g. resti tuere. ff. de rei ven. Aliud sit ppter purgationem quod duellum appellat de quo. C. de gladiatoribus. l. uita li. xi. 7. p̄pugnātib⁹ in duello p totum ritulum. Uel est quod posset diuidi prima diuisio p iustum 7. iniustum Sed in his modicum insistentium 7. singula membra singl̄ sunt explicanda ex ordine suo Et primo de bello celestiali celesti breuissime illud explicabo 7. sic de singulis. Tractabo igitur primo de bello spiali celesti. Secundo de spiritali celesti humano. Tercio q̄ corporali uniuersali. Quarto de pticulari qd sit ob tutelam corporis sui. Quinto de pticulari quod sit ob defensionem mīfici corporis qd rep̄salie nuncupat. Sexto de pticulari quod sit ad purgationem quod duellum nuncupat Pondera diuisionem belli non spreta diuisione paui mei quam oio necessarius est leg ppter



vi. et sic bella primi erat romanū. Secūdu ordinem tractat? tamen hosti. dicebat quod iudiciale Tertii presumptuolum. Quartū illicitū. Quintū temerariū. Sextū uoluntariū. Septimū necessariū quē sequit̃ Jo. an. in. c. i. de homici. li. vi. Hosti. hanc diuisioneꝝ posuit in sūma de treuga ⁊ pace. §. quid sit iustum. d. abb. ⁊ moderni in. c. sicut. ⁊. j. de iure iuran. sequitur hosti. subdit tamē abb. q̃ posset dici q̃ bellum quoddam est propriū quoddam in proprium declarans ibi aliquid sit bellum proprium ⁊ imperium. De diuisione belli uide in sūma glo. xli. q. ii. uide auctorem. j. in. c. lxxvi.

### Cap. iiii.

Edemdo ad singula. dico q̃ celeste bellum insurrexit propter i gratitudinem surgentem ppter defectum fictionis caritatis impesse a creatore in luciferum euz intelligentia inter ceteros sublimior creatū. Et hūc non congruit descriptio superuadens. ubi sciendū q̃ ut inquit Gregorius in moralibus. alinitio creatiōis angelice nature altissimus enim creator creauit luciferum ceteris angelicis intelligentiis eminentiorē. Nam ipsius p̃minat? nō fuerunt inferiores ceteri scilicet i paradiso dei ut scribitur ezechielis zi. abietes plantauit ⁊ equauerunt summitatem nec frondibus eius. Nam ipse speciosus factus i multis conde siliq̃ frondibus dicitur. q̃ p̃elatum ceteris legionibus tanta illum spiritus pulchritudinis quāta ⁊ supposita angelorum multitudo decorauit. Iste arbor in paradiso dei tot quasi cōden sos frondes habuit quot sub se positas supernorum spiritui legiones attendunt. hic fuit signaculi dei fuit iste sic creat? ceteris eminentior sicut ⁊ cetera foramina habuit pparata ad caritatem suscipiendam. Nam hic a p̃incipio conditionis sue capax caritatis est conditus quasi repleti uoluisset statibus angelis tanq̃ in regno positis ornamento lapidib? potuisset inherere. sed caritatem propter lucerham non assumpsit. Si enī caritati auro penetrabili se p̃chaueret sanctis angelis sociat? in ornamento regio lapidis fixus mansisset. habuit ergo foramina. sed superbie uicio caritatis auro non sunt repleta. Quia iūte ceteris eminentior fuit ut signaculi similitudinis dei creatus. nec caritate propter superbiam uiciū repleti uoluit. Idcirco peccāō sine uenia dampnatus. q̃ magnus. sine cōparatione dampnatus fuit. Igitur propter hoc de paradiso electus ut prolixē ⁊ pulcherrime nideri pōt in. c. p̃ncipium eius. de pent. dl. li. ⁊ fuit gregorii ut dixi. Et hoc fuit spale celeste bellū. Circa qd̃ ut p̃mili parū insitēdū. Tamen quia dixi ipsū ceteris eminentiorē. Est attendendū q̃ quedam sunt collata āge lis in p̃ncipio creationis sue cōiter sed disse

renter quedam indifferenter sed cōiter. Cōiter sed drūter fuerunt nature sue substantie subtilitas intelligētia. Drospectuā lib̃i arbitrii habilitas. Nec tamē differunt. Nam quidam sunt in substantia subtiliores quidam in intelligentia p̃piciatores quidam lib̃i arbitrii habiliores. Collata autem cōiter sed indrūter fuerant spiritualitas indissolubilitas idiuuibilitas immortalitas. In his oēs purificantur. Et p̃ hoc intelliges in qbus lucifer fuit eminentior quia in collat. cōiter s; drūter. Est etiam attendēdum q̃ diabolus fuit exaltatus p̃ naturalem progatiā d̃ qua dictum est Exaltatus est etiam ppter uictoriam quam habet contra hominē aliquādo in bello q̃ gerit contra ipsum unde scribitur exaltasti dexterā depimentū cum quā uictoriam timens dauid dicebat. Illumina oculos meos ne unquā obdormiam in morte neq̃do dicat inimicus meus p̃ualui aduersus eum. Exaltatus est etiam ppter supbiā unde dictum est el. Elenatum est cor tuum in decore tuo cum ipse dixit. Ascendam in celum ⁊ ponam thronum meum ad aglonem ⁊ ero similis altissimo. ysaie. xlii. c. Tu pōderā q̃ diabolus sua supbia electus est de celo. Nam p̃ suam conditionē minime sed per suā uoluntatem factus est malus ut in. c. g. ep̃us xliii. di. ⁊ sic non debuit excusari cū lib̃erz habuit arbitrium ⁊ hodie etiam habet sed ad modum tantū sicut angeli habent ad bonum tantū sed hoies ad bonum ⁊ ad malū ut nō in dicto. c. qui ep̃us uide doc. ⁊ maxime de minimū abb. in. c. i. de sūma trini. ⁊ fide ca. ⁊ ibi in. c. i. d̃r q̃ demones bene a deo creati erant boni sed ipsi p̃ se facti sunt mali. Homo uē diaboli suggestionē peccauit. Et pondera etiam q̃ diabolus non fuit electus a beatitudine tātum quam tunc habebat ⁊ ab illa fuit etiam electus ad quam habendam erat creatus. c. ex b̃s omnib?. xxvii. q. ii. Homo enī qui est inter cetera animalia lūme imbecilli tatis iudiciū scire nihil siue doctrina nō fieri non ingredi non uesti Breuiter nihil aliud a natura conlegi q̃ flere ⁊ ut quasi sūmum bonum contēpnere uideat atq̃ altissimū distat hodie qua pena eius puniat supbia diaboli penam cognoscendo qui sua supbia a curia ē expulsus celesti d̃ penā. di. ii. i. c. qd̃ ergo

### Capit. iiii.

De igitur fuit spirituale bellū in quo electus fuit lucifer de paradiso altissimi. ⁊ forte ex illo ortum habuit spirituale humanum. nam i uno quoq̃ genere est deuenire ad unum quod sit p̃imum ⁊ mensura eorum que sunt in comuni genere. In genere igitur repugnantie bonum contra mala est deuenire ad p̃imum. Primum sunt principia. principium autem uiciorū est princeps ⁊ diabolus. ipsorū ergo

pugna est primum et mensura cuiuslibet inferioris pugne spiritualis humane. Donde-  
ra quod verum est quod predicat propterea me-  
ymmo etiam in presenti vita longe missa con-  
tinuum nobis inferunt bellum in. c. spiritus  
sanctus de consecra. di. Unde scribitur in. c.  
l. ii. q. vii. quod diaboli bona sepius solent con-  
vertere in malum et in electis maculam po-  
nere. nam cessant quippe querere quos ex  
fidelibus perdant et maxime illos quos arde-  
tiores in seruitio dei adiant ut in. c. nulli du-  
bium. iii. q. i. et ipse sathanas transfiguratur se et  
angelum lucis ut homines decipiat ut in. c. e-  
piscopi xvi. q. v. habet enim mille modos no-  
cendi quibus etiam utitur. c. i. xii. q. ii. di-  
abolus enim latin. eminator fuit pater men-  
daci quia mendacium dixit nequaquam morie-  
mini sed eritis sicut dii scietes bonum et ma-  
lum habetur in veteri testamento in genesi. i.  
doc. c. dampnamus de summa trini. et maxime  
abb. in penit. col. glo. in. c. i. q. i. in euange-  
lio loquitur mendaciam ex se loquitur. quia  
mendax est et pater mendacii. Nam et diabo-  
lus inuadet homini et semper eum decipere ni-  
tetur secundum dominum abb. in. c. ii. ne ele-  
uel mo. fuit enim principii nostre future dap-  
nationis nisi per lignum liberati fuissetis.  
Nam diabolus dicitur homo ab euentu quia  
deuicit hominem secundum glo. in. c. ii. de e-  
lec. nam verum est uicisse hominem sed per  
altissimi sanguinem fuisse recuperatum cui se-  
plenti dubium. sed sua superbia uicit etiam se  
ipsum. quia fuit a paradiso eiectus cum suis lo-  
clis. fuit equidem electa decima angelorum  
pars ut no. xvi. q. i. in. ca. decime erunt que  
a paradiso exules in eternum quia legitur su-  
lile sine uenia dampnatus. de penit. di. ii. in. c.  
principium sua tamen sagacitate sua solertia  
suis insidiis multi laqueatur hoc i. teterrimo  
mundo. Et testor dei ego Paulus de lignano  
quod cupere dissolui et esse cum christo ut doctores  
canit gentium.

#### Capitulum .v.

**I** forte rationabiliter loquendo  
bella corporalia terrestria habent  
bella celestia correspondentia.

Nam dicit phil. necesse est hunc mundi conti-  
gnum esse supericibus latronibus ut omnis  
uirtus inde regatur primo metrorum et secun-  
do celi. et mundi omnis igitur actus inferior  
corporeus dirigatur a super celestibus. et ibi  
est pugna. i. repugnancia uirtutialis. Insurgens  
propter diuersitatem corporum celestium et  
maxime planetarum apud cieta operantur quod  
fixe et diuersitatem aspectuum liqui et motu  
um eorundem quibus forte atentis. non foret  
bene possibile mundi esse sine bello. et forte si  
esset peccatum secundum sentias naturalium  
et astrologorum tenere mundum non posse di-  
turnari sine bello et cui sola pace quod sic ap-

te posset demonstrari.

#### Capitulum .vi.

Officio cuius sufficietibus et necessa-  
riis necesse est per ipsi effectum. Et  
belli ponuntur cause sufficientes necessario pro-  
ductorie ergo necesse est ponere ipsum bellum  
probat maior. Nam effectus assequi causas su-  
am quoad esse productiuus et destructiuus. i.  
q. vii. quod per remedium. i. q. i. quod per necessitate. lvi.  
di. priscia. lxi. c. si. i. q. i. detraxe et baptismo  
debitum probat minor. Nam secundum sentiam na-  
turalium impossibile est celum stare pericorati  
vii. et viii. ymmo ipsius motus perpetuus et co-  
poris celestia ex sui natura operantur in hoc infe-  
riora effectus repugnantes et excessui repu-  
gnantis insurgit hic inferior per uarieta-  
tem aspectuum corporum celestium et motuum  
ipsorum quod per ex sentias. Nam stricte in pro-  
posito deducendo propter uariam correspon-  
dentiam corporum celestium tempore constructio-  
ciuitatum sunt repte ciuitates naturaliter  
se odio habentes et sic amice et sic genelogie  
sic et particulares homines quod se naturaliter  
odio habent non precedentibus meritis hic  
inde sic et naturaliter se diligentes. Cum  
igitur bella oriantur propter odia et dissonantias  
appetitum hec autem necessario producant  
motibus corporum celestium que tempore et neces-  
sario operantur inferre bella fore et necessario ac-  
ta necessitate naturalis et corporum nature  
fateor tamen quod potentia rationalis non ne-  
cessitat directe et per se ymmo resistere possit  
hinc est quod dicit ptolemus in libro centum  
verborum Anima sapiens dominabitur astris quod  
est ille regulariter et laudabimus ei quod testes  
tamen si theologi secus sentiant me subicere  
in omnibus que eos contingit eorum correctio-  
ni. De hoc tamen bello nihil intendere trac-  
tare quia nimis foret meo metro excedere  
Causa autem theologie propter quas non est pax  
uniuersalis in orbe sex solent reddi. Prima  
quia non puniunt maleficia ecclesiastici. iiii. c.  
Secunda habundantia reipublice episcopum genos.  
xiii. c. facta est rixa inter pastores Albanam  
et pastores Loth. Tertia quia non occupamus  
in pugna contra demonem id non pugnamus  
ut homines psale. xxviii. c. percussimus eum  
morte et in inferno ad epheleos. iiii. Non est  
consultatio aduersus carnem. Quarta quia  
non consideramus dampna guerre in qua per-  
imus animam et corpus et diuitias. per. lvi.  
c. Quinto quia non consideramus euentum  
belli qui est dubius. ii. regum. xii. c. Sexta  
quia non suamus precepta dei. per. iii. c. utina  
extendisse mandata mea. xc. Ex predictis  
igitur inferre duplex spirituale bellum celeste pri-  
mum creatoris contra luciferos ipsos propter et  
sectum caritatis in supbia elatum penitus de  
trono celesti ad centum terre. Et illud fuit de  
quo Job. xlii. c. ubi super uirtutis repugnancia



corporis motui et aspectui celestium introducere  
toris formalis repugnantie inbec inferiora.  
propter quod introducuntur inferiora bella et  
hoc et continuu et successiu a prin. theoloy  
ce loquendo. Et ab hoc procedit et dependet  
spirituale bellum et humanum quod peruenit  
ex repugnantia intellectus ad sensum. Nam  
princeps malorum persuadet et inducit ad ui  
cia ut emergat ad Ro. princeps autem bono  
rum contra ut ad superna eleuet. a secundo  
autem. dependet bellum corporale humanum  
materialiter loquendo ut. 3. proximo tracta  
tu discutietur. Potest quilibet mediocri  
ter prudens cognoscere prouum meum omne  
scientias percipisse ut suo apparet in operib?  
ideo in v. et vi. ca. transeo simpliciter cum ei?  
doctrina legitur in historiis qd cum quintus  
mutius scruola uates legum de iure pretorio  
consultebatur ad furium et caletium qui hinc  
scientie dediti erant consultores reiebant  
unde cum hic prouus excedit iure metas ad  
eum maiorem meum me remitto. Sed dum  
allegat lex causas propter quas accidit belli  
dicas hoc uoluisse glo. Jo. an. in. ca. apostoll  
ce de re iudi. li. vi.

#### Capitulum vii.

Illam spirituale humanum potest  
explicari theoloyce et morali  
ter. Theoloyce est contentio  
ex orta propter inuidiam et repugnantiam di  
aboli contra rationabilem creaturam habens  
fomitam a peccato primi parentis. Et de  
hoc bello spirituali loquitur apus ad ro. vii.  
ca. sic inquitens induit eos armatura dei ut  
ut possitis stare aduersus insidias diaboli.  
Et illa armatura sunt uirtutes et bona opera  
quibus homines armantur contra uicia xi. q.  
iii. qui resistit. Insidie autem diaboli sunt in  
numerabiles. Quam inquit iohannes Papa ha  
bet enim mille nocendi modos nec ignotam?  
astuciam eius. Conatur namq; a principio ra  
tione sue unitatem celestem rescindere carita  
tem uulnerare sanctorum operum dulcediez  
inuidet selle miscere ne fierent. et omnib? mo  
dis humanum genus peruertere ac per turba  
re uolet enim scientie et erubescit caritatez  
qui in celo nequiuu habere homines constan  
tes ex luti materie in terra tenere. Unde o  
portet qd quatenus fragilitati conceditur ut  
omnes audiat? nostri nocendi ei? uersucie mu  
niamus ne mors ingreditur per portas no  
stras. Hoc habentur xvi. q. ii. uisio. Et al  
bi pulcherrime scribit pere. ad ionianu sic in  
quitens. Sic in aliis atq; peccatis femina no  
stra sunt intentus et perfructio diaboli. Cum  
uident nos supra fundamentu edificasse sensu  
stipula ligna. tunc supponit incendium edifi  
catus ergo aurum argenti lapides preciosos  
et temptare non audebit quicq; in hoc certe  
non sit securi possessio. Sedet quippe leo in l

sidis ut in occultis interficiat innocentem  
et uasa figuli probat fornax. homines autem  
lustos temptatio tribulationis. Hoc  
sunt transumpta de pe. di. ii. capitu. si enim  
circa medium. Alibi etiam scribit alexander  
papa in bec. 8. ca. Nam diabolus non cessat cir  
cuire querens quem deuoret et querens quos  
ex fidelibus pdat et maxime illos quos arde  
tiores in fuitio saluatoris eiq; familiares in  
uenerit. Hoc sunt transumpta in. q. i. nulli. et  
6. 5m origialr luce. xi. xxviii. ca. Et habuit  
hoc peccatum fomitam a peccato primi parentis  
non autem a causa positua sed ut a causa si  
ne qua aliter esse non potuisset. Nam si non  
fuit peccatum primi parentis ad nibili fuitet  
hec pagna. Dic ut dixi sup in. iiii. c. Et app  
bo diffinitioem belli fm theologos hic relataz  
per pauum meum.

#### Ca. viii.

Oraliter autem intelligendum  
et fm semitam pbz loquendo  
spuale humanum bellum est con  
tentio exorta ppter repugnantiam rōis ad  
sensem appetitiuū ubi sciendum qd fm phum  
fo de anima. Anima habet quinq; potentias. s.  
vegetatiuam sensitiuam appetitiuam intellec  
tiuam et fm locum motiuam. Appetitum  
dinidit in sensitiuam et rōabilem. Idem phis  
primo politicoz dicit qd anima dñat corpa  
principatu dispositio in ordine ad suum. i. si  
cut dñs suo. Intellectus autem dñatur sensui  
principatu regali. i. in ordine ad liberos hoc  
est dicere qd anima dñat corpi al. sicut dñs  
suo Intellect? aut dñat sensui sicut superior  
cum subdito liberos. Ulterius attendēdu  
qd intellectus dicit rōalis non quia in seipso  
habeat rōem qd sunt potentie distincte for  
maliter sed dicit rōalis non quia in seipso ha  
beat rōem qd sunt potentie distincte forma  
liter sed dicit rōalis quia in homine est apt?  
uatus obediū rationi irrationabilis quia potest  
non obedire rōi uel ponit exclusionem rōis  
formaliter. His pmissis euidenter apparet  
qd appetitus sensitiuos hūanus aliq; obuiat  
rōi Aliquādo obedit rōi ubi obuiat est bellus  
et repugnantia ubi obedit est pax et concordia.  
Exēplum ps in magno mundo ubi omnia in  
seruata sunt apta nata obedire superiorib? latio  
nibus ut eis sitas inde regat. Et cum aliqñ  
non obediunt ppter dispositioem materie et  
inde fiunt aliqua pter intentionem agētium  
superior ut monstra. Sic sensitiuus appe  
titus ut inferior est aptus obedire hic est qd  
dic. plus ii 8 anima tractatu de motu et mo  
nente si intellectus moueat appetitus seu fir  
mum et ipse eidem obediat motus est naturalis  
ac si spera superior moueret inferiorem. Sin  
autem econt? motus tunc non est naturalis  
ac si spera inferior moueret inferiorem. Exēplū  
patz in monarchia ciuili. Nam aliq sunt

subditi repugnantes principibus suis. exempla  
huius repugnantie colligit incontinente. Nam  
in incontinente appetitus sensitivus inclinat  
in excessum utpote in ordinatum cibum po-  
tum vel aliquid simile. Ratio dicitur illud fu-  
giendum ut uocium et incontinente vincit  
intellectus. et ratio et proprie continentia non  
est uirtus moralis formata. nam ut iquit idē  
philosophus in uirtuoso anima consonat. unde cum  
ex multis et frequentibus actibus in appeti-  
tu sensitivo firmata fuerit promptitudo que-  
dam inclinans ipsum appetitum sensitivum in  
bonum et conformiter rationi tunc proprie est uir-  
tus. In incontinente autē patens est hec  
repugnantia. sed ibi vincit appetitus sensiti-  
vus nec illa dicitur uicium firmatum donec  
ex frequentibus actibus in eorum assueverit  
inclinare bellum spirituale humanum loquē-  
do moraliter. De repugnantia etiam loqu-  
tur apostolus ad rom. vii. uideo alium. i. repug-  
nantem legi mentis mee transumpte xxxi.  
q. vi. sed penlandum de consti. nam concupis-  
centiam et de hoc spirituali bello loquitur gre-  
gorius xlii. q. i. nisi bello. In hac autē re  
pugnantia ab adolescentis regali est inclina-  
tio in malum. Nam omnis etas ab adolescen-  
tia prona est in malum genesis viii. ca. xii. q.  
i. omnis etas. Et ratio conuenit multiplex  
assignari. Prima quod malus potest quis per se bo-  
num autem sine gratia. Alia est propter somi-  
tem originalis peccati impellentem ad malum  
Alia quod facilius ad malum bonum. Nam con-  
sistit in medio essentialiter. uicia autem in ex-  
tremitatibus. ad medium autē transitur unica  
uia. Ad extremum autem multiplex. Alia quod  
plura sunt impedimenta boni quam mali. Alia quod  
non sit bonum nisi cum iudicio rationis. quod ado-  
lescentes parum uigent propter offuscationes  
organorum corporalium. Et credo ueriorē  
rationem. Hec de bello spirituali quod circa  
plura possit tractari. sed pretermitto quod trans-  
cenderent metas iuris in quibus minus quam  
possibile sit intendere. Transeo ad  
proposui meo et rationes que hic allegantur  
per eum quare adolescentia sit magis prona ad  
malum quam ad bonum allegat etiam proauus me-  
us in probe. cle. in. ii. dum glo. ibi dicit quod per  
sensualitatem appetimus delectabilia corpori  
et fugimus nocua. et ponit etiam proauus me-  
us in pbe. gregoziano.

#### Capitulum ix.

Ecce tractaturus sum de bello  
uniuersali corporali. et ipsius trac-  
tatum explicabo per quatuor. primo  
quo iuris ortum sit bellum. Secundo  
quibus liceat indicare uniuersale bellum. sub  
iungendo contra quos. Tercio que sint aggre-  
gata belli explicando per modum siue actus liciti  
et illicitos proponi belli aggregatiui. Et  
formando quendam quæstionem circa ipsa. Quarto

que sint persone que accedere possint ad bellum  
Et quid de accidentibus non strictis. Quarto  
de his spoliis que sunt in bello et aliis quibusdam  
que in bello sunt. Sexto per modum tabule  
per instructionem canonice de questionibus con-  
tingentibus materiam belli ubique in corpe  
iuris canonici tractatum fuerit per glo. et doc.  
remittent. Operis precium est ut sequamur  
diuisionem belli uniuersalis corporalis traditam  
per pauam meum hic quæstionem eius ordinem legem bene?

#### Ca. i.

Et deo ad primum. Et primo quod  
quo iure ortum habuit bellum uni-  
uersale. Solo iure diuino et iurē  
gentium diuino ut probat Jo. viii. primo regum  
vi. c. iurē gentium. ff. de insti. et iur. e. l. ex hoc  
iure. Dixi quod bella orta sunt iure diuino  
ubi sciendum est quod bella nedum deo permitti-  
te immo positue concedentem introducte  
sunt et hoc demonstrari potest. Nam omnis  
facultas tendens in bonum a deo positue ne-  
dum permittit deus. Sed facultas belli in-  
ducendi iusti tendit ad bonum ergo a deo posi-  
tue puenit probat maior. Nam omne datum  
optimum et omne donum perfectum dei iustum  
est descendens a patre luminum. Iaco. i. i. q.  
i. quod pie. Probat minor. Nam inductio bel-  
li iusti et bellum iustum tendit ad bonum. Nam  
tendit ad pacem et quietem uniuersi hoc pro-  
bat auctoritate Augusti. ad Bonifatium sic  
inquiens. Non enim bellum querit ut bel-  
lum exerceat sed bellum querit ut pax quæritur  
et subdit Esto ergo bellando pacificus ut eos  
quos expugnas ad pacis utilitatem vincendo  
pducas. Hec habet. xxi. q. noli. Est igitur  
finitis belli pax et tranquillitas uniuersi ergo in-  
ferunt adeo originaliter et positue puenisse.  
Confirmat nam omnis actus punitiuus malo-  
rum a deo puenit. Sed inductio belli iusti est  
punitiuus malorum et rebellium ergo a deo po-  
situe puenit. Probat maior. Nam scribit  
mibi iudicem et ego retribuam puer. xxi.  
et xlii. q. i. Item cum in pueris et alibi  
mea est ultio et ego retribuam deutrono. xxi.  
c. ad hebre. x. ad ro. xlii. c. Probat minor  
aut. Augustini in sermone de puero ceturiensis  
xxiii. q. i. parat? sed non corripicndo immo per  
hanc inductionem concludi possit theologicè  
de necessario in uniuerso fore malos et rebel-  
les. Nam maiestati diuine insunt actus pœ-  
nitatiui bonorum et punitiui malorum ut scribit  
Intellectu bonum. etc. Tunc illo premisso  
posset sic induci posito actu necessario ponit  
obiectum terminatiuum illius actus hoc proba-  
tur per philosophum li. ii. de anima. Nam  
posito actu visionis ponit obiectum uisibile.  
Item et actu auditionis posito ponit obiectum  
audibile posito ergo a principio creatiois mi-  
seri actu punitiuo in deo necessario ponit ob-  
iectum punitibile et tale est malum ut. d. dictum est



Confirmat primum principale. Nam omnis actus per quem tollit nocendi facultas a deo positus puenit. Sed inductio belli iusti est huiusmodi. probatur hoc aut. aug. sic iniquitas bella geruntur ut ad pietatis iusticie societatem vicus consolatur. Subdit. nam cum licentia iniquitatis capitur. utilis vincitur quoniam nihil est felicius felicitate peccantium quam penalis nutritur impunitas et mala uoluntas uelut interior hostis roboratur. Hec habent xxiii. q. i. §. at. per hoc. Confirmatur omnis potestas est a deo iubente uel permittente. Ergo potestas bellica sic prouenit sed non solum permittente. sed iubente ergo iubente. probatur principaliter ad romam. xiii. transumptioe xxiii. q. i. quid culpatur. Quid plura nam ut hoc patet inspectis mundi generationibus. Nam a principio creationis mundi usque ad tempora hoc deus per seipsum et sine ministro malos malos exterminabat ut patet de chanaan et lamech et quibusdam aliis regibus ut scribitur gene. iii. xxviii. ca. per se ergo bella induxit punitiua et malorum exterminatiua. Inferitur ergo expremisio bello iure diuino licta originaliter figuratim. ymmo forte demonstrari posset. Nam inquit naturalis hoc est paruos mundus et sic sit gubernatio in paruo mundo sic in toto uniuerso similitudine tracta. ut inquit phil. viii. phi. et in regione naturalis corporis humani constat quod ubi nullus est humorum excessus nulla est rebellio et pugna conseruationi naturali. ubi aut humorum excessus propter inordinatum regionem tunc pugna nature tendentis in conseruationem contra excessum tendentem in destructionem et in pugna. aliquando sufficit naturalis potentia ad correctionem repugnantie. aliquando est impotens propter excessum morbi et tunc est opus extrinseco remedio. utpote medicamine sapiente naturam ueneni repugnantis cum morbo. Sic indirecte in magno mundo. Nam aliquando in regione et plaga mundi nullus est rebellium excessus et tunc nulla pugna ymmo uniformiter tendit ipsius gubernatrix natura in conseruationem Aliquando est excessus rebellium tendentium in destructionem gubernationis et conseruationis et aliis placationibus et tunc non est opus bello nec medicamine uenenoso. Aliqui in tantum excessu morbus quod opus est medicamine uenenofo penitus materia morbi extirpante Et tale medicamen est bellum eradicatum et exterminatiuum malorum. Dic igitur in paruo mundo recurrit propter defectum virtutis inferioris ad medicum qui equipat remedio extrinseco et uenenoso. Sic in magno mundo gubernator generalis qui est altissimus creator et est medicus uniuersi tendens in ipsius conseruationem et gubernationem cum intantum excreuerunt humores tendentes in destructionem uniuersi uel partis eiusdem. Iulicia excessus et alterius importabilia respectu conseruationis

monarchie mundane utique remedio bellico ut exterminet uicia et excessus ut discrosia reducat ad terminos temperamenti. Et sicut in corpore humano isti humorum excessus sunt circa membra singula corporis humani et etiam discrosia insurgit aliquando propter humores unius excessum quicquid alterius. Sic in uniuerso singulas regiones et mundi plagas que sunt membra magni mundi sunt his uicioz excessus que repugnant ipsius gubernationi et aliqui in uno aliqui in alio sunt uicioz uarietates et sic contingit plagas mundi infirmari propter uicioz excessus que quicquid sic excedit quod opus est medicamine eradicatiua quo eradicabunt aliquando boni cum malis sicut medicina euellit etiam mixtim bonos cum malis ymmo propter dictum excessum penitus extinguit ut mors contingit etiam in singularibus suppositis quod patet ex sensatis nam regiones infinite propter hoc sunt penitus extincte et inhabitabiles reddite. Infinita possent recitari exempla Hoc idem contingit in gentilibus et in regiminibus que etiam minuit ut penitus deficiant. Et licet hec sint dicta sic figuratim tamen textibus legis diuine aptissime demonstrant. Nam ut legitur gene. xix. c. propter excessum morbi sodomie deus usus est medicamine bellico et eradicatiua contra Sodomam. Sodomam. Segar. et Eleale. licet due perirent propter uicinitatem ut de pe. di. l. §. sed continuo et. c. cl. de excel. prela. et in aut. ut non luxurient contra naturam circa fl. coll. vii. Possent induci innumera exempla de isto etiam medicamine bellico. Josue. viii. c. Nam ibi dominus noster iubet ad Ierusalem noue ut constituat sibi retrosum insidias et insidiantes bellatores ad insidiandum hostibus Et August. in libro quonum super uerbis Josue. Iusta autem bella diffiniri solent que uicisue iniurias et delictorum excessus. Et subdit gens uel ciuitas plectenda est que uel uindicare neglexerit quod a suis improbe factum est. Subdit et hoc genus belli sine dubio iustum est quod imperat qui nouit quod cuique fieri debeat. non dicit permittit ymmo imperat. Subdit in quo bello dux exercitus uel ipse populus non tam actor belli quam minister dei iudicandus est Et sic clare demonstratur deum et medicum altissimum conseruatorem uniuersi bella impare et eradicata. Hoc habentur transumpta xxiii. q. ii. dominus noster. De hoc et bello et medicamine eradicatiua scribitur mochaheorum v. ca. et de throno. cap. ii. ubi ex mandato dei filii israel bella gesserunt contra amezos quod etiam tractat augustinus in libro i. Et habetur transumptum xxiii. q. ii. ca. notandum. Sane de hoc etiam scribitur iudicum v. ca. ubi elegit dominus noua bella loquitur de his erradicantibus uicioz excessus. Scribitur etiam ysaie cxxx. et bellis propriis expugnabat loquitur de his eradicantibus Scribitur etiam in Machabeis iii. ca. Cō

fortissimi et bellatores. Scribitur etiam per  
xx. ca. dominus est mecum tanquam bellator. pe  
renie super sobuniam pulcherrime hec scri  
bit dicens si quis fortitudinem latronis ut pir  
rate enumerat et infirmos prodest illis sua i  
firmitas debilitate enim membra quibus non  
bene membrantur a malo opere cessabunt. Co  
clusio est ieronimi quod sonant uiciosi si cernat  
moribus quo membra infecta in malum dispo  
bantur et hoc fit bello eradicatione. Hec ha  
bentur xxiii. q. iii. ca. si quis fortitudinem hec  
aperte demonstratur luce vii. ad ebreos xii.  
dicit et dominus seruus qui nescit uoluntatem  
domini sui facit digna plagis uapulabit pau  
cis. Seruus autem qui scit uoluntatem domi  
ni sui et non facit digna plagis uapulabit. Ex  
cedens igitur recipit plagas a domino. hec  
sunt transumpta xxii. q. v. ca. uindicta.  
Hic legitur quod alias multos affecerit morte  
propria manu et igne diuinitus impetrato iux  
ta regum. i. ca. et c. ubi uide xxiii. q. v.  
Sic scribitur de aliis temporibus ueteris legis  
iii. regum xviii. et xxi. ca. Sic scribitur  
quod uerbum petri apostolorum principis ananias  
et uxoris eius tradiderunt actui iii. ca. trans  
umptius habetur xvii. q. i. ananias xviii. q.  
v. ca. uindicta in fine. De hoc bello eradica  
tione pulchre loquitur gregorius ad aramich  
dam francorum reginam sic inquiens ne si quod  
non credimus diuine uisionis iracundia sce  
leratorum sine actione commota belli pestis et  
terrinitat quos delinquentes ad rectitudinis  
uiam dei precepta non remouent xxii. q. v.  
si quos inquit nonne dominus ad moysen ma  
leficos non pacis uiuere exodi. xxi. Moy  
ses etiam qui legem acceperat a domino cul  
tores idoli dolore puniri ut exodi. xxii. ca.  
Samuel etiam mandato domini agne rege  
pinguissimum in frustra confidit et regum.  
xv. ca. transumpta habentur xxiii. q. v. §.  
hinc apparet. Dominus etiam egiptios flucti  
bus submersit exodi. xiiii. ca. israhelitarum  
caduerat prostravit in beremo. nume. xiiii. c  
transumpta habentur xxii. q. v. quid ergo  
Infinita possunt super hoc demonstrando in  
duci exempla ueteris et noue legis diuine.  
Sed hec sufficit. ut ex his enumeratis suf  
ficiat concludere bella originaliter ortus ha  
buisse ex iure diuino et non solum dei pmis  
sione ymmo et positius ab ipso mundi guber  
nator et medico uiciorum eradicatione propter  
salutem mundi conseruationem. Et cum in  
hunc finem tendunt bellica remedia ut supra  
clare dictum est. Propter hanc autem de  
traham et uiciorum multiplicatum excessus  
in uniuersi destructionem progredientes ex  
sensatis apparet altissimum creatorem tempo  
ribus retro actis et hoc eradicatione remedio  
ulum fuisse. Nam regna et mundi regimi  
na quam plura penitus enervata ut quam  
plura remissa quid de Trojanorum assensu  
quid de grecorum impio Quid de romanorum

uniuerso dominio partes itale temporibus  
nostris febriunt et subiciuntur examini medi  
cine parat alicubi minorata alicubi eradica  
tione exercitates ad summum quorum habitu  
nes sunt fallaces iuxta doctrinam pirusimi  
ypocratis et amporisimorum hanc regionem di  
duxit ad motum ut altissimus congruam ad  
habet medicinam ut cuius humores in quibus  
et quibus temperamento plus cum qui ex pleni  
tudine fuerit euacuatio sanet iuxta doctrinam  
eiusdem. Hec autem conclusio uidelicet quod  
bella pueniant a deo potissime et originaliter  
demonstrari posset atento diuine maiestatis  
uniuersi et perpetui ministerio. Nam altissi  
mus omnium creator mediante celesti machi  
na in hanc terrestrem machinam naturaliter  
operatur sed supernaturaliter immediate ubi uult spi  
rat et influit sed naturaliter loquor dictum  
pitiusimam phi drimo methauidice et fo celi. ne  
cessum est hunc mundum contiguum esse supio  
ribus latioribus ut omnis utique inde regatur.  
Influit altissimus naturaliter in hec interiora  
mediante celesti et sperico corpe. Illud autem  
totum corpus operatur mediante motu et lumine  
ut inquit idem phi. Et quia in ipsa tota  
machina celesti sunt partes diuersas ututum  
influyendo utputa legatim uarietates stellaz  
errantium et fixaz diuersitas a quibus ppter  
uarietatem naturarum et motuum dependet  
effectus omne genitum et corruptibile. Id  
circo quolibet contrarietas et naturaz diuer  
sitas et repugnantia hic inferius insurgens  
pendens est de super. Ex quo statim infer  
tur quod cum repugnantia et difformitas sint  
ordinatoria bellorum seu introductoria quod bella  
inde oriuntur ymmo experientia docet quod ppter  
uniformitatem et difformitatem aspectuum tpe  
natiuitatis insurgunt inter homines natura  
les dilectiones et naturales inimicitie. Hoc glubet  
expit. Nam quis diligit statum cum uiderit  
nulla meritis precedebis et sic odio habebit  
nulla de meritis precedebis. Sic inter ci  
uitates et villas et castra insurgunt dilectiones  
naturaliter ppter uniformitatem et diffor  
mitatem aspectuum tempore constructionis  
earum et sic insurgunt odia et bella ex influ  
entia celesti. Sic et amicitie et paces  
inter prouincias. Hec autem celestis  
natura mediante motu est productiva gene  
rationis et corruptionis in his inferioribus au  
gmenti et diminutionis ne dum singularia  
supposita ymmo in singulas mundi plagas.  
Nam ex hac superna natura plage habitabi  
les et e contra iuxta doctrinam phi. ubi mare  
fiet aridum ubi aridum fiet mare. Ex hac na  
turarum repugnantia et dispositionum ex qua  
rix contentiones et bella particularia et u  
niuersalia insurgunt hec propter motuum et  
aspectuum uarietatem. quedam exaltat que  
dam extinguit et quedam depemcit. Nonne  
mundi regia uniuersalia et particularia.  
Et hec demonstrari potest. Nam posita est



sufficiēti p̄ductiua alicuius effectus necesse est illum effectū p̄duci nisi adsit aliquod extrinsecum impedimentum p̄ductionis. Sed natura celestis p̄inet dissimiliter motu et aspectu et ipsius p̄tes sunt dissimiles ex natura sui influendo ergo necesse est p̄duci hos effectus repugnantes et dissimiles cum non sit q̄ impediri posset. Et hoc inferri posset naturaliter necesse est esse bella. nec aliter procedere naturaliter mundi gubernatio p̄stet tamen licet q̄ hec celestis natura operetur in hec inferiora non tamen de perse et directo in intellectus humanum ymmo durat libertas arbitrii ut in. ca. nabuchodonosor. xxiii. q. iiii. et ca. de ciuitis et de pe. di. ii. ca. sicut enim et p̄his in ethi. Sed operatur in organa uirtutum sensitiuarum que recepta influentia administrant intellectui. Et sic per indirectum insinuat hic est q̄ scribitur in libro centum uerborum. Anima sapiens dominabitur astria. Sed quia hoc tractare nimis elongatur a terminis iuris non ulterius circa hanc deductionem insisto. Sed sufficiat alitum ex predictis et demonstratum bella promouisse a deo pollicite et effectiue licet ex hoc ultimo inferatur non in mediate machina celestis naturaliter operando. In quo scribit proamus meus theoloyce in. x. ca. posse cōcludi necessarios fore malos et rebellos etc. scribit tamen xxiii. questio. v. in capitu. nō solum q̄ bonum est esse demones quia sunt ultores ire dei in his qui malum operantur. nam per nabuchodonosor et per antiochum et per principes romanorum et per nōnullos reges gentium populum israeliticum delinquentē elutius aliquando puniuit ut p̄ belle cōcludi ambrosius transampelue xxiii. q. v. in ca. si. Nam promeritis subditorum depunatur nita rectorum ca. si hereticus. li. q. vii. et in. c. i. ca. causa et q̄ uestione in v. si quid plura p̄ proamum meum scribitur scribunt doctores in ca. v. de fore cōpe. i. restant q̄ deus a principio creauit celum et terram et omnia que in eis sunt angelicam et humanam naturā. spiritalia et nō spiritalia et hoc rexit p̄ seipsum precepta dedit et transgredienti penā imposuit per seipsum scilicet ade et eue. puniuit charym et quosdam alios usque ad noe. tempore deus cepit regere per ministros Et noe fuit cui deus dedit gubernationem arche et i hac rectoria successerunt patriarche reges et alii do nini hoc durauit usq̄ ad Christum qui fuit naturalis dominus. Et in uicarium postea constituit petrum per illa uerba Tu es petrus et super hanc petram edificabo ecclesiam meam et tibi dabo clauis regni celorum. Nota i. c. in nono xxi. di. xxiii. q. i. loquitur. Item dicit dicit accipe spiritum sanctum quorum remissio peccata remittentur eis Jo. xx. c. ad demonstrandum q̄ petro ut capiti seorsus dixit petre palce omes meas io. ultimo ca. Et sic uoluit olo deus q̄ petrus p̄esset omnibus et

esset cephas et caput principum xxi. di. cetera que in hoc ca. dicuntur p̄ proamum meum mihi probantur.

### Capitulum xi.

Tri secundo q̄ illa orta sunt iure gentium hic tamen p̄sidera q̄ licet dicant iura q̄ bella sunt introducta iure gentium ut ysidorus. i. di. ius gentium et bermogeman? iuriconsultus in. l. ex hoc iure. ff. de iusti. et iure tñi credo q̄ bella orta habuerint non solum ex egre te naturalis humane intelligentie et create ymmo p̄mordialiter ex dispositione nature naturentis non solum influentis sup act? humanos ymmo sup quibuscūq̄ animatis et et inanimatis ut sit uerz dicere q̄ habeant bella orta a iure nali etiam ut distinguit a iure gentium q̄ q̄liter differant p̄bat tex. in. l. i. §. ius gentium et §. ius nale et l. ex hoc iure ff. de iusti. et iure et p̄ma di. ius nale cum sua glo. et c. ius nale. Quod hoc sit uerz sic ostendit ex principis nalius caluilibet nali creato est insita nalis inclinatio ad exclusionem cuiuscūq̄ repugnantis sue nali dispositōi hoc p̄ inducendo in singulis naturalibus simplicibus et mixtis. Nam aque insitum est igni resistere et econtra p̄pter repugnantiam qualitatū sic in singulis elementis sic in mixtis induci possent hec q̄ p̄ in beatīs ubi ex nali repugnantia complexionum vnum inclinatur nali ad occasionem alterius et econtra sicut in rōali creatura insita est inclinatio a natura etiam circūscripto intellectuali dictamine ad p̄fugandum quocūq̄ sibi repugnans quod hoc sit uerz rōe p̄bat. Nam natura omnium creatorum p̄ductiua non minus debuit esse sollicita in fuatione rationabilis creature q̄ ceterorum cum ipsa ceteris sit nobilior ut. c. cum infirmitas de pe. et remiss. et l. i. sancimus. C. de sacrosanc. eccle. et c. hec imago. xxii. q. v. et p̄pter ipsam omnia infra globus uolitare sunt p̄ducta ut. l. In peccatum. ff. de usufr. Si igitur natura induxit inclinationem nalem in ceteris creaturis ad quocūq̄ sibi cōtraria p̄fuganda quanto magis hoc debuit in rōabili creatura hoc idem sensualiter patet per singula supposita discurrendo. Nam glibz hoc in seipso expit si hoc ex principis nali? hominibz insitum est ergo ex hac inclinatione nali p̄mordinalr habuit ortum bellum. Cum bellum ut supra suriptum est sit contentio ex orta p̄pter tollendam repugnantiam. In s̄p̄t ergo q̄ illa contentio que orit p̄pter tollendum dissonum et repugnans conseruatōi sue fundamentaliter habuit ortū a principis nalius ut sic a iure nali put distinguit a iure gentium. Sed statim dices hec destruit text? qui dicit ex iure gen. oriri ubi aduertendum q̄ licet a iure nali inducta sit ista inclinatio nalis circūscripta nali intelligentia

tamen inclinatio illa regulat per dictamen rationis  
 et intelligentie naturalis sicut dicimus in sin-  
 gulis actibus qui debentur hominibus natu-  
 raliter circumscripto intellectu utpote  
 inclinatio ad cibum et potum et coitum ista  
 hominibus competunt naturaliter et tamen  
 in homine regulariter dictamine rationis quod  
 non est in brutis que carent illo dictamine.  
 Sic ergo credo fuisse mentem illorum tex-  
 tus uidelicet quod inclinatio illius inclinationis  
 introduce a principiis naturalibus insurgit  
 ex iure gentium. id est ex equitate generali ratio-  
 nis intelligentie. Sed quod ipsa inclinatio sit  
 de iure naturali hoc probat glossa in. Lex hoc  
 iure. ff. de iusti. et iure et i. di. ius gentium.  
 Nam glossa utroque ponit sic ista uerba sic in-  
 telligit de inclinatione regulata per dictamen  
 rationis. Et licet dicunt textus quod ex iure gen-  
 tium insurgunt bella non tamen credo falsum  
 dicere bella id est illas inclinatas. inclinatio-  
 nes habere ortum a iure civili et a canonico  
 Nam ius civile et ius canonicum non dicunt  
 aliam equitatem quam sit equitas iurisperiti-  
 um. Nam omne ius consistit in quadam rec-  
 titudine et inde ius dictum est ut i. di. ius na-  
 turale. Sed ius civile et canonicum sunt rec-  
 titudo uite et equitas iurisperitum. Sed si  
 addunt supra rectitudinem illam aliqualem ex-  
 plicationem tunc dicitur ius civile uel canoni-  
 cum. nam ius legale et ius canonicum habet  
 specificare explicare rectitudinem et equita-  
 tem iurisperitum quandoque eam determinan-  
 do ad varios actus quandoque determinando  
 per varios euentus. hec omnia probantur per  
 text. in. l. ius civile. ff. de iusti. et iure. Tamen  
 dicit ibi textus ius civile est quod nec in totum  
 a naturali uel gentium iure discrepat nec per  
 omnia ei seruit itaque cum aliquid addimus vel  
 detrachimus iuri comuni. ius proprium. id est civile  
 facimus. Est ergo uerum dicere quod bella sunt  
 de iure civili et canonico. id est ipsa rectitudine  
 que est ius civile et canonicum. Nec obstat  
 textus statim allegatus. quia illa rectitudo ni-  
 hilo addito uel detracto iurisperitum nuncu-  
 patur. Et sic loquitur iura statim allegata.  
 Sed cum aliquid additum uel detractum est  
 tunc civile uel canonicum nuncupatur. Nul-  
 li tamen dubium quoniam ius civile et cano-  
 nicum circa bella supra dictamen rationis ge-  
 neralis aliquid addant. Expredictis inferitur  
 quo iure bella orta fuerint. Proponitur me-  
 in hoc. ca. tenet quod bella orta iuncta dispositi-  
 one nature naturantis non a iure gentium. Ta-  
 men bar. et bal. et alii antiqui et moderni in  
 Lex hoc iure. ff. de iusti. et iure tenent et iure  
 gentium orta sunt bella per illum text. doc. i.  
 §. ius gentium. insti. de iusti. et iure et doc. in  
 ca. ius gentium. i. di. pro istis facit. nam dictio  
 denotat causam immediatam. id est §. ff. de iudicio  
 rei. nauarra. sed dicitur per iurisperitum  
 hoc iure gentium orta sunt bella. Ergo  
 mihi uidetur quod prius meus multum sapienter

loquitur magis alte aspiciendo quod iurisperite et ca.  
 non iurisperite et quod. l. ex hoc iure. Debeat intelligi  
 prout ipse intelligit aliter diceremus contra iura  
 Nam sicut comedere et bibere est commune omnium  
 animalium ita etiam cullibus animalium etiam bru-  
 to est insita naturalis inclinatio ad exclusionem  
 cuiuscunque ad expugnantis sue naturalis dispositioni  
 ergo hoc non conuenit soli homini nimirum si  
 non uidetur procedere ex iure gentium sed ymmo  
 ex iure naturali prout quod hoc sit res in bru-  
 tis probatur in. l. i. §. cum arietes. ff. si quadra-  
 paupie fecisse dicat.

## Ca. xii.

Secundo quero quo iure licitum  
 sit bellum contra infideles et in-  
 uadere terras eorum et propter hoc  
 indulgentiam concedere cum iurisperite  
 in contrarium disponere uideant. Nam nihil  
 ad nos de his qui foris sunt. ii. q. i. multi etiam  
 quia origine possessiones et iurisdictiones sunt  
 apud eos. nam deus propter totam rationalem cre-  
 aturam hoc produxit Nam apud bonos et ma-  
 los facit solem oriri. Mathei v. et vi. ad finem  
 etiam qui ad fidem aggregati non sunt cum tunc  
 alii omnes incorporati sunt relinquendi arbitrio  
 xlv. di. de iudeis ymmo quod plus est dimitti  
 potest infideli iurisdictione super conuersos ad fi-  
 dem dummodo non nimis grauet. Primo ad  
 thimoth. vi. c. Solo ut clare liquet est attē-  
 dendum quod hic oportet pmittere que tetigi  
 in materia reprobationis in prin. s. unde etiam  
 habet iurisdictionem et etiam ymo Imperator  
 que hic pmittere quia ibi plene tactum fuit  
 Quo sic presupposito etiam attendendum quod in  
 eadem ciuitate sub eodem rege sunt duo po-  
 puli et secundum duos populos due uite et secundum  
 duas uitas duos principatus et secundum duos principa-  
 tus duplex iurisdictionis ordo. Eadem ci-  
 uitas est ecclesia. Unus rex est christus. Duo po-  
 puli sunt clerici et laici. Due uite sunt spiritualis  
 et carnalis. Duo principatus sacerdotum et  
 impium tamen unum est principale. scilicet ponti-  
 ficatus In quo sit resolutio alterius aliter frivole  
 monstraretur phis. xii. metaphis. concludens  
 unitatem creatoris sic demonstrans multitudinem  
 principatum mala entia male uolunt dispo-  
 nit unus ergo princeps sic dicit etiam in propo-  
 sito quia in quolibet entium genere est dare unus  
 primum quod sit metz et mensura omnium aliorum  
 ut idem phis sic in monarchia tota est deue-  
 nire ad primum mouens immobile ut idem phis  
 phisicorum vii. et viii. tale non potest esse impi-  
 um respectu pontificatus pmittere infinita  
 super hoc allegabilia. Sufficiat ergo inferre  
 quod unus est dominus orbis vii. q. c. i. in apib.  
 ix. q. iii. cuncta per mundum et c. p. principa-  
 lem. ff. ad l. Rod. de iactu. de peccato et iste  
 est papa et hoc non solum super fideles ymmo  
 etiam super infideles habet iurisdictionem quod  
 clarius demonstrat. Nam christus super omnes



habuit potestatem unde in psalms. Deus iudicium tuum regi da Si xps habuit non fuisset diligens paterisimi. si petro constituto vicario suo curam non dimisisset qd nephas est dicere cum petro tradidit claves dicens qd cuiq ligaueris. etc. Mathei xvi. et alibi pascas oves meas id. ultimo. Sic igitur papa habet d iure iurisdictionem super infideles licet si de facto. Hinc est q gentiles habentes solam legem nature peccant contra legem nature poni potuerunt per papam. Nam scribitur genensis xix. ca. q sodomites puniti sunt a deo ergo et uicarius dei hoc poterit. Item si colant idola. nam naturale est creatorem colere et non creaturas. Item poterit etiam punire iudeos si faciunt contra legem suam in moralibus et non puniuntur a prelatibus suis. Et de christianis non est dubium quin puniri possint si faciant contra legem euangelii. Ex quibus inferitur qd papa tanq uerus princeps potest bellum indicare infidelibus et indulgentias concedere propter recuperationem terre sancte et maxime terre consecrate natiuitate xpi habitatione et morte eiusdem ubi non colitur christus sed machabectus. Item terra sancta uicta fuit post mortem xpi iusto bello per Imperatorem Romanum qui post spoliatus fuit per infideles. Idcirco licitum est pape recuperare ratione principatus quod optinuit. In aliis autem terris que non sunt consecrate nec imperium nec ecclesia habuit iurisdictionem de facto potest papa facere preceptum christianos subditos al potest eos per sententiam priuare iurisdictione sua. Et per hoc uide que ut in pluribus tracta sunt de his que no. Inno. de uoto qd super his patet solutio ad primum quesitum. scilicet de iusticia belli inducti ab ecclesia contra infideles. Ex quo inferitur iustificatio belli inducti per Imperatorem contra hostes. De his que hic dicuntur per proximum meum bar. in. l. hostes. ff. de captiuis et postliminio reuerfis. sed remittit ad dicta Inno. in. c. qd super his de uoto. et bal. in. l. ex hoc iure. ff. de iudi. et iure. Item facit in lectura antiqua et dominus abb. et alii in. c. sicut. j. d. in re iuran. se pariter remittit ad dicta Inno. primo non est dubium qd ciuitates que fuerunt sanguine christi consecrate non debent in manibus esse infidelium cum multi Imperatores acquisierunt dominio christianorum propter has ciuitates recuperandas a Papa teneris potest bellum idcirco hoc concludit tota scola iuris canonici uide bar. in. l. christianis C. de paganis. deinde inno. in dicto. c. qd super his concludit qd infideles licite tenent dominia et principatus et alia bona. qd non est distinctio psonarum apud deum et sine causa si debent a christianis molestari. Sate tamen qd si infideles delinquant papa potest bellum indicare contra eos. Sed hosti. tenet qd si infideles non recognoscunt dominum ecclesie licite

possunt bonis spoliari sed si recognoscunt dominum ecclesie et christianis non sunt infesti posset sententia tollerari. Inno. pbat in. c. dispar xxiii. q. viii. opi. hosti. unde nona ppe tex. cum glo. in. c. si de rebus. xxiii. q. vii. Tu pondera qd esset inconueniens qd infidelis dominum non recognosceret et gauderet ea dignitate qd esset alicuius ciuitatis dominus. Nam eis interdicte sunt dignitates ut habet in. l. si. C. de iudeis et ibi bar. Nullus enim potest habere iurisdictionem temporalem nisi sit christi anus bar. in rubrica de iudi. et iure glo. in. l. si spadonem. s. io autem. ff. de excu. tu. Sed bene posset statim in ciuitatibus habere populi et non deberent molestari sed qd possent habere aliquem principatum hoc non fateor nec aliquod dominium ciuitatis quia tunc haberet vim dignitatis. Pondera intantum inqritus proximus meus dicit qd infideles delinquentes puniuntur per papam et sic sequitur Innocentius in deo c. qd super his qui uident totam iurisdictionem in fidelium attribueret pape qd non uidet vix fm dominum abb. ibi Nam etiam sunt sub roma no Impio ut. c. de iudeis et. c. de paganis per totum dic quedam sunt crimina ecclesiastica et commissa per infideles et puniuntur per papam Et ut pmissa sunt per eos crimina non ecclesiastica et puniuntur per Imperatorem fm dominum abb. ibi et posset dici diuisionem Impium cum Ioue celar. habet tamen pe. de anchora. in reg. ea que in vi. qd concludit qd ecclesia debet infideles punire uide dominum abb. in. c. gaudemus de diuor. uide abb. in. c. de infidelibus de consang. et affini. et an papa inter laycos infideles habeat iurisdictionem uide dominum abb. in. c. consulunt de appel. Nam infideles immediate sunt sub tempore dominio ut per Jo. an in dicto. c. gaudemus per abb. in. c. in nonnullis de iudeis. uide abb. in. c. p mirabilem de rris uide glo. in cle. pma de testibus in v. pncipii glo. in cle. si. de re. iudi. in vo xpiani glo. si. in cle. si. d iudeis uide. c. pstituit xvii. q. liii. et ibi gl.

### Ca. xiii.

Bi sciendum est qd duo sunt populi. scilicet romanus et populus christi-  
us. De populo romano sunt primo oes qui in totum obediunt Impio romano. Nam populus accipitur p toto Impio ut. l. roma. ad municipales. Quidam non obediunt in totum. sed in aliquibus ut qui uiuit legibus imperii et satentur ipsum dominum orbis ut sunt ciuitates lombardie et similes. et isti sunt in populo romano. Nam cum in aliquibus iurisdictionem exerceat ipsam retinet ut. l. si prius de aqua plu. arden. et ibi no. Quidam sunt populi qui nullo modo obediunt imperatori nec uiuit imperii legibus. sed dicunt hoc facere ex priuilegio ut ueneti qui asserunt se hoc facere ex priuilegio. Et isti etiam sunt d populo romano. qd pccario hoc tenet ab im

peretose et ipso reuocare potest qsi noluerit  
ut. l. si quis in pira. ff. de legi. llii. Preterea  
illud privilegium eis concessum debet esse ac-  
commodatum ut non privent civitate romana  
ff. de captivis. l. in bello. §. si quis frons. Qui  
dam sunt populi qui non obediunt Imperatori  
et asserunt hoc sibi competere ex contractu  
ut sunt pannonie romane ecclesie que asserunt  
hoc sibi competere ex donatione Constantini  
et aliorum Imperatorum. Et isti etiam sunt et po-  
pulo romano. Nam ecclesia ibi exercet iuris-  
dictionem quam habebat Imperator vnde si desinit  
propter ea esse ciues romani. Idem dico et  
regibus qui non fatentur se subditos impera-  
tori ut rex francie Anglie Hispanie et simi-  
les qui asserunt hoc sibi competere ex privi-  
legio vel prescriptione. Et per hoc infero  
quod omnes gentes sere que obediunt sancte ma-  
tre ecclesie sic sunt de populo romano. Et  
si quis diceret Imperatorem non esse domi-  
nam diceret contra textum evangelii. dum  
dicit exire edictum a cesare Augusto. Popu-  
li autem extranei sunt qui non fatentur impe-  
ratorem dominum ut greci qui dicunt suum  
imperatorem esse dominum. Item tartari  
qui dicunt granicam esse dominum. Et  
sarraceni qui dicunt esse sui dominum solda-  
num. Inter istos tamen est differentia. Nam  
quidam sunt nobis federati ut greci contra  
turbacos. Quidam cum quibus habemus pa-  
cem ut sunt tartari. nam mercatores nostri  
vadunt ad istos et sui ad nos. Quidam sunt  
cum quibus nihil facere habemus ut iudei.  
Quidam sunt cum quibus guerram actualē  
ut sunt sarraceni et hodie cum turcis. In-  
ferat ergo quod cum princeps sit secularis su-  
perior non habens in secularibus nisi for-  
te ut dixi quod ipse potest indicare bellum contra  
hostes suos et qui sunt post statim patuit. Et  
hoc est bellum de quo loquitur. l. hostes. ff. de  
captivis et de iur. sig. l. hostes et in hoc uide-  
bit sibi locum bellum quod inducitur a popu-  
lo romano ut imperatore adeo quod si imperator  
inducat bellum civitatibus aliquibus italie re-  
bellibus vendicat sibi locum effectus publici  
belli. quod idem si repugnetur officiali impera-  
tori vel pape non propter imperatorem vel  
papam. Ad unguē bar. in. l. hostes. de cap-  
tivis et postliminio reuersus sequitur ad quod  
hic predicatur per primum meum.

#### Capitulum xiiii.

Ad querendum quid alia a princi-  
pe licet bellum inducere uniuersa-  
le Solutio non licet sine prin-  
cipis auctoritate. Nam homini sine principis  
licentia licet arma portare. ut. C. ut usus ar-  
morum in rabao et nigro. et glo. in aut. et mō.  
principi colligit et in aut. de armis. §.  
colla. vi. et est ratio nam nemini sine princi-  
pis licentia licet iura violare. Jura principis

violat qui sine iuris solemnitate maius regia-  
tus sibi picit ubi habetur copia ius dicendi  
idcirco sine eius auctoritate non licet. Soli  
ergo principi competit ius auctoritate cum  
non habeat superiorem ad quem recurrat per  
iusticia. Hodie tamen quia sunt populi non  
recognoscentes superiorem de facto non re-  
quiritur in illis superioris auctoritas cum non  
recognoscant ymmo tota die bella inducun-  
tur a populo contra populum in illo regito. et firmo  
dictum paui in l. p. ea que uoluit eldra in cō-  
silio. ccc. xxi. incipiente ut eius de quo queri-  
tur aliquis noticiis tē. ubi dixit quod sicut in  
donatione facta imperatori vel ab imperatore si  
requirit insinuatio ut in aut. Idem est. C. de  
dona. no. glo. in. l. p. e. et. Ita erit in dona-  
tione regis seu alterius domini de facto tenē-  
tis locum imperatoris in terris suis allat. d. l.  
p. nide io. an. in addic. spec. in ti. de instrō-  
rum editōe. §. p. p. in ultima addic. et io. et  
ymo. in. c. cum contingat de iure iuran. in  
penit. carta et aliquid p. bal. in. l. scilicet. C. et  
dona. uide. c. p. venerabilem qui filii sunt le-  
gittimi uide bar. in. l. i. de decre. decu. li. x  
in v. col. uide. d. abb. in. c. sup. quibundam de  
v. signi. in. iii. coll. ad scripti multum late in  
repeti. mea. l. ceteris. ff. de vulga. et pup. et ē  
Et pondera quod illud quod hic dicitur per primum  
meum approbat p. d. abb. in. c. diem et j. de  
iure iuran. in. iii. col. uide de mēte Innoc.  
in. c. olim de restit. spoli.

#### Ca. xv.

Iterius quero nūq. bellum quod  
promouet Imperator contra ecclesiam  
sit iustum et teneant subditi ei in  
hoc obtemperare videtur quod sic quia  
fit principio auct. vel mandato ergo tē. Etia  
quia dat iurisdictiones de iudi. c. nouit qui  
filii sunt le. cāz. et c. per venerabilem de appli-  
li duobus etiam quia in pertinentibus ad ar-  
moz ulum subditi debent et tenent obedire  
imperatorum etiam scismatico. i. q. iii. fol.  
Sed contrarium est uer. Nam imperator  
est aduocatus ecclesie et tenet eam defendere  
idcirco non potest eam impugnare de uatis ex  
libero ven. c. vno de restit. spoli. c. cōgrente  
ymmo inducendo bellum contra ecclesiam  
meret perdere privilegium indicendi bellum  
cum illo abutatur. xl. q. iii. privilegium de decimis  
subgestum ut punit in quo delinquit et inf  
ac. quanto. §. ne autem ymmo talia peccata  
in principe non distat ab hē de hereticis ex  
emplificamus. i. §. i. et ibi no. Etia quia pass  
superior est. Nam examinat imperatorem ipsi  
reprobant et deponit et elect. venerabile de re-  
ladi. apli. li. vi. In hoc igitur casu non  
tenentur subditi iurare imperatorem contra  
ecclesiam ymmo e contra et potest papa absol-  
uere eos a iuncto fidelitatis xv. q. vi. nos  
sanctorum et ca. iureto et nota de hereticis



excommunicamus. 7. de pe. c. 8. Et quædo a proano meo quomodo potest Imperator inducere bellum contra papam 7 subditi habebant ei obedire. Dicas secundum Jo. an. 7 hosti. in. ca. olim Directi spoli. Dicitur imperator est homo iniquus 7 peccator monitus se non corrigit sed peiora committit 7 tandem excommunicatur per papam 7 omnia cõtempnitur 7 mouet bellum propter hoc contra ecclesiam 7 concludunt postea cum proano meo hic q̃ non sit iustum bellum. Vide dominum abb. in. ca. sicut 7. j. de iure iurandi. vi. co. l. unde dominum abbat. in capitulo venit de iudic.

### Ca. xvi.

Iterius queritur quid econtra si papa inducat bellum contra Imperatorem scismaticum hereticum uel alias usurpantem iura 7 libertates ecclesiarum omnes fideles tenentur iurare papam 7 etiam uasalli Imperatoris absolui possunt a iuramento quo tenentur uel declarari non teneri ut ca. nos sanctorum 7 ca. iuratos xviii. q. vi. Tu pondera q̃ idem tenet dominus abbas in. ca. sicut 7. j. de iure iur. in vi. coll. unde. ca. venerabilium de electis 7 in ca. pro humani de homici. uisq̃ doc. in ca. ex gestis de cle. nõ res. hodie facit quod habetur in extrinseca bonitatis que incipit unam sanctam.

### Ca. xvii.

Iterius est uidendum de aggregantibus 7 ipsum bellum perficientibus quo ipse fieri debeant. In bello sunt legio. 7 habet septem milia centum pedites 7 septingentos xix equites. Sunt cohortes 7 quilibz cohortes habet xx. alas. Et prima uocatur miliaria. Et habet pedites mille. Leuites cxxi. Secunda quingentaria dicitur 7 habet lvi. ita no. glo. ff. de his qui no. in fa. l. i. in prin. hoc igitur 7 dux 7 ordo faciunt bellum summæ do pro multitudine apta 7 ad bellum precepta non autem per acta bellandi. Duo tam principaliter fundant bellum scilicet arma 7 uires. Hec diuiditur in tres partes. equites pedites 7 clauos. Nam equitibus campi classibus marina 7 flumina. pedibus colles urbes plana arbuta seruantur. Hinc inferitur q̃ pedites magis sunt necessarii rei publice quam equites q̃ possunt undiq̃ procedere. Tu pondera bar. sequitur. d. l. ii. allegat hic per proanum meum 7 alii doc. 7 postea dicas q̃ pedites 7 equites habet se ut excedentia excessu respectu habito ad qualitatem temporis 7 loci. ar. glo. l. apud antiquos. C. de far. cum similibus. De legione uide glossam in. c. l. ne sede uocan.

### Capitulum xviii.

Ilites autem in bello sic se habere debeant ut seruent iuramentum quod presterunt. Nam iurent se strenue omnia facturos q̃ precipit Imperator 7 nunq̃ deserturos militiam nec mortem reculaturos p̃ defensione rei publice. ff. ex quibus. ca. ma. l. penu. C. de his qui non imple. sti. l. prima libro. x. Eorum ducibus debent obedire ut lege collatores in principio. Nam cum a re publica amantur 7 aluntur solis debent insistere utilitatibus 7 esse in numero milicie ut armorum quotidiano exercitio ad bella se p̃pararet ut. l. milites. C. de re. milita. 7 sic debet ducibus obtemperare q̃ si contra p̃ceptum eorum fecerint etiam bene nihilominus capite puniant. ff. de re. mili. l. desertorem. §. in bello. Abstinere debent ab aggre. cultura animalium custodia mercimonia questui aliena non peragant negocia. Ad ciuiles curas non accedant alioquin militiam 7 eius priuilegia nudabunt 7 de re. mili. l. nemo milites. C. d. procul. l. militem. Non emanet predia ubi militant 7 tempe quo militant nec etiam alieno non molestant. Dicitur non inquietabunt fallit illa regula ubi fisco distrahatur eorum bona paterna 7 ubi ex hereditate querunt hoc autem inductum est ne studio culture a militibus aduocent hoc habent. ff. de re. mili. l. milites. Pondera q̃ sex sunt necessaria in milite. Primo ut non sit negociator. Itē q̃ p̃stet sacramentum per gentium principis q̃ mortem rei publicæ causa non eritabit. Item tñs ei cingat. Item stigma. i. nota publica debet eis in brachiis insigi 7 inscribi 7 poni l. iii. C. d. fabrice. itē i. nōs alioz p̃ol 7 scribi de his per glo. in di. l. pelt. 7 per glo. in rubrica insi. de ti. multis uide glo. p̃mam. ii. q. i. in. c. p̃bibe 7 ea q̃ hñt l. si. C. locasti.

### Cap. xix.

Dacem autem belli pertinet militibus parcissime comestam dare equos militares extra prouintiam duci non permittere milites in castris retinere ad armorum exercitationem p̃ducere ad opus priuatum piscatū venarum non mittere clauos portarum suscipere uigilias circuire tormentationi comitionum interesse frumentum mensure fraudē cohercere delicta castigare querelas comitionum audire ualitudinarios inspicere. Hec habent in. l. officium. ff. de re milita. Ad eas etiam pertinet officium in uirentis fluminis ripas legionem ponere. Et ut omnino nullus aquam polluat ne ut abluendo quorū sudorem publicos oculos maculet sed procul in inferioribus partibus fluminis id facere permittat. Hec habent. C. de re mili. l. ingentio

Ad ipsius etiam officium pertinet castra ponere ubi lignorum pabuli aque copia habet et ut diutius commorandus sit loci salubritas eligatur mire sit uicinus aut altior locus qui ab aduersariis captus possit efficere. Considerandum etiam ne torrentibus inuidari consueverit campus hoc vegetius de re mili. l. i. c. xx. Ad eius etiam officium pertinet finium militum castramentari castra ne maior multitudo constipet nec ne paucitas in latioribus ultra quam oportet rogat extendi. Ad bonum etiam ducem pertinet in quo loco dimicandam est noscere qui quanto superior fuerit utilior indicat quam si uictoria; ope dicitur sperat contra milites hostium loca in equalia aspera montuosa debet eligere. Sin autem e contra loca plana potentia neque siluis neque paludibus impedita. hec uegetius l. iii. c. xiii. de re mili. Hoc ad officium ducis pertinent ad specialem magisterium militum ut l. magisterie. C. de iure om. iudi. et l. i. cola. de re mili. Pondera quoque etiam dux debet omnia que sunt in bello que sunt causa uoluptatis ordinata auferre ut peregrinatus publicus corneli; stipio. et alii imperatores efficiantur dari et non delicti ut nostris legitur in historiis maxime in ualerio in. ca. de militari disciplina. Circa multa enim debet esse doctus imperator hostes ferire. praedia agitare nihil metuere nisi turpem famem hyemes et estatem iuxta patibulum requiescere eodem in tempore in opus et laborem tollerare per salutem in gurgitio In primis imperator scientia rei militaria debet pollere cicero in oratione pro pompeio Unde uegetius de re militari dicit nullus est quem oporteat uel plura uel meliora scire quam imperatorem Cuius doctrina debet omnibus prodesse subiectis. Nam turpe est patricio uiro ignorare in quo uersetur. l. ii. §. serui autem sulpicius. ff. de origine iuris debet esse litteratus. Nam solitus est dicere Cato quod plus rei publice prodest qui disciplinam militare confert cum litis. Nam secundum uegetium xiii. ca. iii. libri bonum imperatorem conuenit noscere ipsum locum in quo dimicandum est. Et alia uide de quibus ibi. Item cicero in oratione pompeiana sic loquitur uirtutes in patet uulgo esse existimantur scilicet labor in negotiis fortitudo in periculis industria in agendo celeritas in consistendo consilium in prouidendo.

#### Capitulum xx.

Alie autem puniuntur milites ut uarie delinquit. nam ut committunt delicta propria aut commissa Et in propriis puniuntur pena militari et agitur pena gradu sepe milicie ut. l. ii. ff. de re milita. Punitioes autem sunt pecuniarum castigatio. Inuiolentius interdictio ignominie missio ab exercitu missio gradus

delectio. In metallum antequam uel opus metalli non deputat sed decapitatur non enim pro milite sed pro hoste reputatur. ff. de re mili. l. ii. §. i. et §. is qui. et l. peditores. Capite autem puniuntur qui proposito manus intulerint qui inobedientes fuerint qui spectantibus ceteris prius fugas arripuerit exploratores qui secreta nuntiant hostibus qui metu hostium inimitatem simulant qui commilitones gladio vulnerauit qui sine causa se vulnerauit uel mortem sibi conscivit secus si uite tedio uel doloris in patientia. Nam tales infamia non debent. Per vinum autem aut per lasciuiam lapsus militia mutat qui non defendit propositum suum cum potuit capite puniri qui non potuit et pascitur. Hec habetur. ff. de re mili. l. omne delictum et l. iii. §. si. Item qui exploratores obuiuit hostibus insistentibus aut de fossa to recedit capite puniuntur etiam si rem bene gesserit. ff. de re mili. l. iii. Item si cocitauit atrocem seditionem desertor tempore belli capite puniuntur tempore pacis equis gradu repellit pedes militiam mutat. ff. de re milita. l. non omnes Tamen desertores puniendi sunt et qualiter haberi debet ratio gradus ordinis stipendiorum et aliarum circumstantiarum qui excessit pascui comeatus ut emanator uel desertor reputatur habet tamen rationem quibus tardius uel citius rediit uel si implemento aliquo. ff. de re mili. l. iii. §. si. et l. qui comeat et l. non omnes. Habet etiam rationem ante acte uite. Emator est qui diu vagatus a castris ad ipsa rediit desertor qui proximum tempus vagatus ad castra reducit. l. iii. remanens. ff. de desertoribus si in urbe inueniatur capite puniuntur alibi si ex prima desertione captus iterato deserat capite puniuntur. ff. de re mili. l. non omnes desertorum defensorum bona confiscantur. C. de re mili. Pondera quoque alienasse arma graue est crimen et simile est desertioni et hac si omnia arma alienauit. Si uero tibiale uel humerale alienauit. uerbis cedendus est. Si uolontariam scutum et gladium desertori ipse est filius l. qui comeatus spacia. ff. de re militari. In omnibus que hic dicuntur per pauum meum. Parcendum tamen est tironibus. l. iii. §. si plures. ff. de re mili. et l. i. qui cum uno. §. si. et l. iterato delinqueret et c. ut ibi.

#### Cap. xxi.

Ad quia dictum est superius in. c. xvi. preterito ibi ulterius est uidentur de aggregatis et c. in fine cap. quod fortitudo uel uires et arma habent bellum principaliter et quia in iure non discutitur natura fortitudinis explicite expedit quod ipsius natura aliquantulum explicetur et per modicas questiones cum quibus eius natura concludatur. Et quero primo an fortitudo sit uirtus moralis et apparet quod non Nam fortitudo est dispositio corporalis ut. l. i.



C. de athlet. li. xii. de his q no. infra. l. athlete  
ff. ad. l. aquil. qua actione. §. si quis in collu  
catione de pug. in duello. per totum. C. de gla  
diato. l. i. ergo non est uirtus moralis cū dis  
positio corporalis differat ab habitu seu dispo  
sitione anime et sic inferior gradu. de de peni  
et remis. l. cum infirmitas xii. q. i. precipim?  
xxiii. q. iiii. si habes. C. de sacrosanct. eccle. l.  
sanctimus. Secundo sic omnis uirtus mo  
ralis est conlectatrix in passionibus et opera  
tionibus ut probat philosophus in ethicis. Sed forti  
tudo est conlectatrix in medio ut idem phi  
l. ergo. Tercio sic q non est una uirtus. nō  
est uirtus ymmo uirtutes. q pluralis locu  
tio ad minus duorum numero est contenta.  
ff. de testi. l. ubi numerus et regula pluralis.  
de regu. iur. li. vi. Et confirmatur per dictū  
phi. primo de corum. Nam eadem est diffini  
tio proportionis et unius propositionis q for  
titudinis nō sit una uirtus probat hic minor. nā  
una uirtus opponitur duobus uiciis extremis  
ut xli. di. sepe de consue. ex pte. Sed forti  
tudini opponuntur quatuor extrema scilicet  
et intimiditas et timor et audacia.  
et defectus in audendo qui est ignorantes ut  
probat tex i eth. Oppositū probat phi. iii. ethi  
Pro solutione questionis est aduertendum  
q fortitudo sumitur equivoce pro fortitudine  
que idem est q robor corporis et fortitudine  
que est uirtus moralis. prima est potentia q  
quis potest mouere ut probat philosophus primo re  
thor. et utraq reperitur in bello et sic sumpta  
fuit generaliter cum dixi q fortitudo la  
uires et arma fundant bellum cum utraq re  
quiratur sed de prima que est robor corporis  
nō est dubium q nō est uirtus moralis p su  
pra allegata. Sed de secunda procedit qd et  
illa est uirtus secundum quam nos bene ha  
bemus circa timorem et audaciam in bellicis  
periculis et de ista prosequamur qz prima est  
plana in modis et temporibus. Prointel  
lectu autem fortitudinis anime est attende  
ndum q in audendo et timendo contingit  
exercere et deficere et utrobique male agere.

Contingit et medie se habere et sic uirtuo  
se. Differt tamen audacia a timore. Nam  
audacia est paulo appetitus irrationabilis se  
cundum quem inclinamus ad agrediendum  
terribilia. Timor inclinatur ad fugiendum et q  
libet experitur in seipso. sed utraq contingit  
bene agere et male. Nam si quis uideret decē  
armatos et solos aggrediretur eos. male cir  
ca aggressuram et male circa timorem ageret  
Sic etiam in timendo quis excedere potest  
ut exemplum si sint centum homines in agut  
et nō uideant nisi centum et fugiunt male cal.  
Sic etiam nō aggrediendo ut si uiderit spo  
liare ciuitates si non aggrediatur male agit  
Et sic uidetur excessum in nō timendo cum ex  
pedit. in timendo cum expedit. in aggredie  
do cum nō expedit et nō aggrediendo cū ex  
pedit. Et sic habes uicia extrema audaciā et

timorem et utrobique gradum ut supra. Alteri  
us ē notandū q utrobique ē repire excessū ex  
tremorum uicium et uitupabilem ibi est repire  
medium bonum et laudabilem qsi esset totum  
malum et uitupabile. Nam posset dici q  
defectus est uitupabilis. Nam defectus  
diceret defectus mali et sic non foret malus  
Expediit igit q in medio sit bonum cuius re  
spectu unum dicat malum excedendo aliud  
deficiendo. Ex his inferunt due questōes  
seu due conclusiones p solutōe qōis. Prima  
q fortitudo anime est uirtus moralis. Secūda  
q est uia uirtus probatur prima. Nam omnia  
habitus electius mediū laudabilis est uirtus  
moralis sed fortitudo est huiusmodi ergo probat  
maior p locum a diffinitione que argumēta  
tio est valida in iure. ff. de reg. iur. ff. d. polli  
l. i. in prin. et l. bona fides. c. ti. Sic autem  
diffinit philosophus uirtutem moralem fm et bi. probat  
minor. Nam fortitudo est habitus intellecti  
uus mediū circa timorem et audaciam ut pro  
bat philosophus iii. ethicorum. Confirmatur illa est  
uirtus moralis que generat in nobis in more  
id est consuetudine et hec appellatur moralis  
fortitudo est huiusmodi ergo et probat maior  
p locum a causa formali que argumentatio ē  
valida in iure. ff. ad. l. fal. l. si is qui quadra  
ginta. §. quedam. ff. loca. l. rei. §. ope. ff. d. v.  
signi. l. edificia. §. perfectissime et l. q forma  
c. ti. i. q. i. detrahe de bapti. obitum. Probatur  
minor. Nam in actu bellico propter pericula  
appetitus sensitius inclinatur hominem ad fu  
gā ut dicit philosophus ubi in bellicis uendicat sibi  
locū ita et ad ea que sunt impetuosa et sic nos  
inclinatur ad extrema uiciofa uirtus autem que  
est promptitudo appetitus rationalis inclinat  
ad medium et illa promptitudo generat ex ac  
tibus iteratis alias non delectabilem operari  
et sic non esset uirtus cum in uirtuoso nulla  
debet esse appetituum repugnantia ut idem  
philosophus secūdo et bi. et patet prima conclusio uis  
licet q est uirtus moralis. Secunda conclusio  
est q est una uirtus. Quidam hoc sic probant  
Timor et audacia sunt passionēs contrarie  
fortitudo est uirtus media ergo est tantum  
una consequentia probatur. Nam unum quod  
q agens intendens ad argumentum unius  
contrariorum tendit ad remissionem alterius et  
sic uirtus minuens timorem auget contrarium  
et contra. Confirmatur uirtutes morales spe  
cificantur a fine Sed unicus est finis ergo  
unica est uirtus. Primus patet per locū a cā  
finali quod est ualidum in iure a. l. unus. §.  
si fuus. ff. de consti. l. ultima. ff. de decui. l. ge  
neraliter. C. de epi. et cleri. xvi. q. i. c. cum  
cessante de appel. et c. et si xpianus de iure iur. p.  
secūdo. Nam finis fortitudinis in bellicis ē  
bonum corporis et si alio bellat propter lucrum  
non est fortis ymmo auarus. Alii dicunt aliter  
uidelicet q timor et audacia non sunt passio  
nes contrarie hoc probatur sic. Timor et au  
dacia se compatiuntur in eodē respectu eius  
b

dem ergo non sunt contraria tenet p̄sēntia  
q̄ posito uno contrariorum remouetur reli-  
quū. ff. de insti. l. sed si pupillus. §. si instito-  
ria. ff. de regu. iur. l. ius nostrum. 1. l. hec v-  
ba. ff. de verbo. sig. in auc. de man. §. li. col. iii  
xxii. di. hospiciozum cum si. Primum patz  
nam quis propter bonum honestum bellare.  
sed timet propter dampnum etiam quis agze  
dicitur 1 sic audacia. 1 non timet ne ledatur  
1 timor. Et sic ista opi. est contra textuz pbi  
secundo retio. nec ualet ipsorum ratio. nam  
delegatio 1 tristitia secundum omnes sunt  
contraria 1 tamen idem delectari pōt 1 tri-  
stari circa eundem actum. tolle in adulterio  
delectatur propter sensualitatem. Et sic de p-  
bibitione merces in mari propter tempesta-  
tem. Sic in proposito quis tunc propter ma-  
lum presens audet propter spem. Prima  
igitur opi. uerior. unde albertus tenet q̄ licz  
sint quatuor extrema ut supra non tamē sūt  
alibi duplices. nam quicunq; inclinatur ad be-  
ne audendum non timet. Et quicunq; non in-  
clinatur ad bene audendum non audet. 1 sic  
insert unicam uirtutem. Alii dicunt q̄ si  
sunt nisi duo extrema. Nam si aliquis nihil ti-  
met nimis audet. Et sic timor 1 audacia faci-  
unt sic unum extremum q̄ sufficiat expedi-  
ctis concludere q̄ fortitudo que est unū pri-  
cipale fundans bellum ut sumitur pro corpo-  
ris robore non est uirtus moralis. sed ut su-  
mitur pro uirtute anime 1 uirtus moralis est  
una. Et hec est ista que bellum ad finem tñ  
producit. Pannera q̄ an fortitudo sit uir-  
tus moralis tangit pbi. optime in iii. et bico.  
Et de fortitudine uide tullium li. i. de officiis  
in ca. in quo de ea tractat quod quidam ca.  
incipit intelligendum est autem cum propo-  
sita sint genera quatuor dē. uide sanctum tho-  
mam in secunda secunde questione cxxiii. p-  
totum 1 theologi in iii. sentētiani di. xxiii.

#### Capitulum xxii.

Itum est de fortitudine que fun-  
dant bellum principaliter que ē  
uirtus moralis 1 una. Sed quis  
tractatum dirigo ad Cardinale

Quero utrum hec sit cardinalis apparet q̄ si  
nam magnanimitas nō est uirtus cardinalis  
ergo nec fortitudo tenet cōsequētia per lo-  
cum a maiori qui est ualidus in iure ut lege. i  
C. de neg. gest. ff. de senato. l. qui in dignis. C.  
de sacro. sanc. eccl. aut. multo magis solma.  
l. ex diuerso. §. i. C. de epi. 1 cle. l. si qua p ca  
lumpniam xxviii. q. v. si paulus. vii. q. i. si er-  
go. vi. q. i. in mare xl. di. quilibet de elect. cū  
in cunctis. Sed magis uidetur incelle q̄ ma-  
gnanimitas sit uirt' moralis q̄ fortitudo qz  
nobilioz 1 maior ut dicit pbi in ethicis tra-  
ctata de magnitudine. patet primo uidelicet  
q̄ magnanimitas non sit cardinalis qz tunc  
cardinales forent plures iiii. Solutio sic to

ta humana conuersatio non uersatur circa  
fortitudinē ut cardinē. ergo non est cardia-  
lis qz inde cardinalis nuncupatur. tenet cō-  
sequētia per locum ab etimologia. qz est ua-  
lidus in iure. ff. si cor. pe. l. ii. §. appellata in  
pbeio. ff. de discipuli. C. de epi. 1 clerici. Dece-  
rim? ff. de uer. sig. l. tigurii. c. t. 1 l. libeornz  
§. q̄ si papi. xi. di. clericos. xvi. q. i. si cup.  
1. c. cum fm de p. uen. patet primum. Nam  
fortitudo uersat solum circa picula bellica.  
Sed pauci ducunt uitam suam cum bellicis  
piculis ergo. In contrarium apparet auc-  
toritate cōmuniter loquentium qui istam po-  
nunt in numero cardinalium inter quos est  
seneca qui fecit tractatum speciale 1 tuli' in  
rethoricis diuidebat uirtutes in has. iiii.  
cardiales 1 hec ar. ab auctoritate est ualida  
in iure. C. de summa tri. 1 fide catho. ep̄la iter  
claras. C. de ho. qz li. l. cū mltis. ff. de re. di. l. i.  
tantū. §. xenotopii. Pondera qz v̄tutibus  
his quatuor principalibus satis pbeile tractat  
li. i. officiorum sit mentio per glo. in cle. i. de  
summa trini. 1 fide catho. 1 subdit ibi que  
dicantur uirtutes theologice 1 pondera Ci-  
ceronem in li. iii. rethoricorum ad extremum  
ubi tractat quid sit prudentia iustitia forti-  
tudo 1 modestia. Nam prudentia est callidi-  
tas que rōe quadam potest delectum habere  
bonorum 1 malorum 1 appellat prudentia  
multarum rerum memoria 1 ulus plurius ne-  
gociorum iustitia est equitas ius unicuique  
tribuens fortitudo est rerum magnarum ap-  
petitio 1 rerum humilium contentio 1 labo-  
ris cum utilitatis rōe perpētio. Modestia ē  
in animo continens moderatio cupiditatum  
1 de his etiam habet in. c. ex his. xxviii. q. ii  
vide glo. in aut. ut omnes obediunt iudicibus  
in prin. Et pondera quid sit uirtus quia v̄t'  
est habitus electius fm p̄bōs ut refert hic  
proanus meus. Nam uirtus est que habente  
proficit 1 opus eius bonum reddit fm p̄biū  
glo. si in cle. prima de summa trini. 1 fide ca-  
tho. Sed Cicero hoc scdo antiquorū retho-  
ricorū dicit q̄ v̄tus est animi habitus natu-  
ralis atq; rōi consentaneus 1 habz quatuor  
ptes. i. prudentiam iustitiam fortitudinem 1  
temperantiam 1 diffinit singulariter eas 1 po-  
nit earum ptes. Dicunt enim v̄tutes quasi  
uirum tuētes 1 p̄seruantes a uiciis fm glo.  
in cle. prima de summa trini. 1 fide catho.  
Et pondera qz v̄tus aliqui capitur p sine ut  
habet in. l. legis v̄tus. ff. de legibus

#### Cap. xxiii.

Ro enidētia 1 soloe qōis primo  
est videndum unde 1 quare uir-  
tutes dicantur Cardinales Ubi  
sciedum fm alberti q̄ sicut car-  
dines celi sunt poli uidelicet antarcticus 1 ar-  
cticus super quibus mouetur celus 1 cardies  
hostiorum 1 portarum super quibus reuoluū



tur. Sic a simili uirtutes ille dicuntur cardinales super quibus uersatur tota conuersatio humana et quas si quis habet dicitur simpliciter bonus et in ipsis non. Sic etiam domini cardinales inde iudicio meo nomen supererunt. nam ipsi sunt mundi cardines quibus tota mundi gubernatio reuoluitur et fingitur et ad ipsos spectat sustentare totum pondus mobilis gubernationis et motum ipsius fixum prestare sumentum duobus polis numero contenta est celestis machina et sufficiunt stabiles. firmanz ordinez motus non deuiant a loco fixationis humani generis monastica gubernatio quatuor cardinibus fuit contenta et sufficit. Si inde unde numerus unde uarietas. unde infirmitas. unde tanta a centro distantia a tanta superle dicimus eam non est nomen arbitrii. Sed quod de cardinalatu dixi in tractatu de ecclesiastica censura nunc pertransio ut reddam ut discutiam principale positum. Et quod iure ut dixi non plene explicatur ad plenum naturalium aliquantulum succincte propter fortitudinem explicandas de eo tractabo.

#### Capitulum xxiiii.

Ciendus est ergo quod ut dicit philosophus uirtus est habitus electius ut idem philosophus asserit secundum rectorem omne quod est cadit sub electione. et eligibile est triplex de triplici specie bene proueniens. uidelicet bonum utile. bonum delectabile et bonum honestum. Et ista sunt per electionem appetabilia et fugabilia. et omnes uirtutes morales circa ista tria uersantur.

Explicemus unum quodque. Et primum bonum utile circa quod uersetur uirtus altero de tribus modis. aut expendendo. aut accipiendo. aut conseruando. Plures actus electionis non experitur homo in seipso ista obductio ab experientia ualida est in iure et probatur in probemio. ff. circa prin. in aut obmodum. circa prin. ff. de le. iii. l. si chorus. §. bis uerbis et de ueteri iure enucle. l. ii. §. que oia de elect. §. sit li. vi. Si expendendo hoc contingit dupliciter. Aut enim expendit sua aut aliena. Si expendit sua tunc circa ista expendendo uirtus liberalitatis et magnificentie. uicia opposita scilicet auaricia et prodigalitas peruersitatis et beneficentie. Sin autem non sunt sua tunc potest distribuere illis quorum sunt et tunc est iusticia ut ff. de iusti. et iure. l. iusticia et insti. e. §. iusticia. xi. q. ii. cum deuotissima. Aut distribuit illis quorum non sunt et tunc est in iusticia ut in iuribus statim allegatis a contrario quod est ualidum argumentum ut l. i. §. huius rei. ff. de offi. ei' culman. est iur. l. i. per procuratorem. §. ignorantes. ff. de mandati. et c. cum apostolicam de his que sunt a p. et c. cum uirum. ob conuer. iuga. i non reddendo illis quorum sunt homo dicitur sim-

pliciter malus xxiii. q. vi. si res de usuris cum tu. ff. de usur. l. sequit. §. q. an patet quod iusticia est cardinalis quia non habendo ipsam circa distributionem eorum que sua non sunt homo est simpliciter malus. Sed libertas et magnificentia que consistunt circa distributiones eorum que sunt sua non sunt sua non sunt cardinales quia quis male distribuendo sua non est simpliciter malus sed bene dicitur fatuus. et sic habes unam cardinalem. scilicet iustitiam circa expeditionem inutilis boni. Sin autem uirtus moralis uisatur circa annum utile in accipiendo hoc contingit dupliciter. Nam aut accipit que sua sunt uel debita uel aliena et sibi non debita. Et si sua uel sibi debita et a quibus non debet petat contra liberalitatem magnificetiam. Non tamen est simpliciter malus. hinc est quod contra talem sunt iuris remedia introducta unde vi. vi. bo. rap. ff. et c. per illos titulos furti. et de condic. ex. l. et canonibus que in singulis casibus explicantur secundum uarietatem actuum et sic per explicationem unius si actus scilicet exceptio circa bonum utile appetit quod iustitia obtinet cardinalatum non autem liberalitas sine magnificentia cum per oppositum iustitie dicatur simpliciter malus non autem per oppositum liberalitatis uel magnificentie. Sin autem uisetur uirtus moralis in retinendo bonum utile hoc etiam contingit dupliciter. Aut retinet et conseruet sua aut retinet aliena. primo casu retinendo que sua sunt et nulli dando perdet contra liberalitatem et magnificentiam nec talis est simpliciter malus. Et si istes Si diues uiderit pauperem indigentem ad mortem et nihil det peccat mortaliter risderi potest quod tunc retinet non proprium sed commune tempore talis necessitatis sit scienda communio ut probat clemens lex roibus. xii. q. i. dilectissimus et aug. ut transumit viii. di. quo iur §. i. Sin autem quis retinet aliena simpliciter est malus et iniustus appellatur si inuito domino retineat et prodita sunt remedia iuris de quibus ob. Circa igitur bonum utile elicitur unquam bonam solam uirtutem cardinalem tam in distribuendo quam in accipiendo quam etiam consuando quia per ipsum oppositum homo est simpliciter malus alie autem non sunt cardinales quia per earum oppositum homo non est simpliciter malus. Cardinalis est iustitia non cardinales sunt liberalitas et magnificentia et hoc clarum. Dicebam igitur quod hoc erat secundum bonum delectabile circa quod uisatur uirtus moralis et circa hoc uisatur uirtus moralis et circa hoc uersatur dupliciter aut largiendo sicut sunt uirtutes que sunt in ludis et cum aliquis largitur aliis delectationem habet. Et huiusmodi sunt amicitia affabilitas et eutropelias. Iste autem uirtutes non sunt cardinales quia non sunt de necessitate humane nature quia multi sunt magni et uirtuosi qui in talibus nesciunt se habere. Quin autem suscipiendo et hoc dupliciter. Aut enim uisatur principaliter circa delectabile

tunc dicitur simpliciter et appellatur in temperantia. et dico se male habere excludendo. nam insensibilis qui non delectatur non est simpliciter malus sed excedens sic habes temperantiam que optinet cardinaliatum quod per eius oppositum quis simpliciter est malus. Et est de necessitate humane conservationis. Sin autem uerletur simpliciter circa tristabile. et hoc dupliciter. nam est quoddam tristabile quod aptum est mouere ad iram et tunc uersatur mansuetudo hec non est cardinalis. quod non est necessarium si quis irascatur per actum remittitur quo minus traueat ad actum secundum exteriorem iusticie. sin autem transiret ad actum exteriorem non diceretur iusticia. Sin autem est tristabile quod est aptum mouere ad timorem et tunc est fortitudo. Nam sicut ille est simpliciter malus qui uult substinere terribile propter bonum fortuitum. Et sic fortitudo est uirtus cardinalis et hec de bono delectabili. Dicebam ulterius quod est bonum tertium scilicet honestum. Et tale est triplex quoddam pertinet ad uirtutem cognoscitiuam. Et hec sunt uirtutes intellectuales. et hec sunt scientia. sapientia. intellectus. ars. et prudentia. Quoddam pertinet ad uirtutem interpretatiuam ut ueracitas et falsitas. Quoddam pertinet ad uirtutem appetitiuam. Capiamus secundum membrum scilicet pertinens ad uirtutem interpretatiuam et dico quod ista ueracitas spectans ad uirtutem interpretatiuam non est uirtus cardinalis quod non reddit hominem simpliciter bonum nec eius uicia simpliciter malum et cui uicium magis oppositum est iactantia. Sed iactator est triplex. Est enim iactator simplex iste est gratia delectationis. alter honoris alter gratia lucri. sola prima iactantia opponitur directe ueracitati. Alie autem ingrediuntur aliam speciem uicii nam primus solum spectat quod est mendax. sed mendacium est duplex nam est mendacium quod est simplex falsa significatio uocis. et de illo dixi quod directe opponitur ueracitati. Aliud est falsa significatio uocis cum intentione fallendi. Et illud facit hominem simpliciter malum et incidit in speciem iniusticie. Et has et alias species mendaciorum persequitur augustinus in illa mendaciorum transumptum ne habetur xxii. q. ii. ca. primum capitale. Aliud est ut dixi bonum honestum pertinet ad uirtutem appetitiuam. et hoc dupliciter. aut essentialiter et tunc sunt uirtutes morales de quibus supra tractatum est. Aut significanter et talia sunt honor laus bona terrena. Et circa istud bonum honestum est magnanimitas. et tales non sunt uirtutes cardinales. Nam multi sunt uirtuosi qui etiam non appetunt honores quibus sunt digni. Sin autem loquimur de bono honesto quod spectat ad uirtutem cognoscitiuam. Tunc sunt uirtutes intellectuales ut scientia. intellectus ars et prudentia. Primum tres non Cardinales quod

non sunt de necessitate uite humane. Sed prudentia est de necessitate boni immo impossibile est aliquem esse uirtuosum sine prudentia. Nam prudentia regulat ceteras uirtutes. Ex his inferre qualiter fortitudo propter quam fit homo est uirtus cardinalis et apparet qualiter quatuor sunt elicitue ex triplici bono appetibili et frangibili triplici uirtute anime anime nostre. scilicet iustitia temperantia fortitudo et prudentia que nedum Cardinales sed immo inter ceteras obtinet papatum et principatum sit aliquis discursio sed sic supportat. quia non deputauimus iuristas pronunciaris explicare naturam fortitudinis de qua est principalis homo.

### Cap. xxv.

Consequenter queritur An aliquis possit dici fortis etiam si non fuit exercitatus circa pericula mortis in bello apparet quod sic. Nam fortitudo est necessaria bonitati humane cuius sit cardinalis ut super prima questione quod bonitas humana haberi potest sine exercitio bellico ergo consequentia probatur a coniunctis ff. de neg. gest. l. at qui natura. iiii. di. denique. uide nunc de superfluitate. Primum patet per nona. q. i. prima questione. Item Tullius dicit quod fortitudo est considerata periculorum susceptio et laborum perperatio. Hoc autem potest esse sine bellico actu ergo probatur consequentia per locum a sequenti destructo quod est ualidum in iure argumentum. ff. si cer. pe. l. ii. §. ii. C. de furt. l. apud antiquos §. qm. ff. de in inte. resti. l. non uidetur. Oppositum dicit philosophus iiii. ethicorum quod propterea hoc continetur in sacramento militis cum accingitur non cuius tamen mortem. l. p. ff. ex qui. ca. ma. et l. i. C. de his que non imple. stip. l. i. li. xi. Duo solent questionis est attendendum quod fortitudo sumitur generaliter per omni firmitate animi. Et hec est generalis ad omnes uirtutes. Nam animi in constantia vituperatur et iure reprobatum. xii. q. v. horrendus de iure iurā. quem admodum. ff. de adalt. l. si messor. ff. de decur. l. p. ff. de neg. gest. l. pāp. Regula quod melius et regula mutare de reg. iur. li. vi. Et hoc modo foret dubium quando talis possit esse sine periculo bellico. Sumitur etiam stricte prout uirtus specialis que est incliuatio ad aggrediendum et expectandum pericula pro fugiendo malum culpe unde triplex est malum nocuum quod apponit utili triste quod apponit honesto bonus autem anime quod est honestum est periculi bono utili et delectabili sicut anima rationalis preferenda est corpori. xii. q. i. peripim. xiiii. q. iiii. si habes. C. de sac. sanc. eccle. sanc. cimi. §. peni. et remis. c. ci. firmitas. Ex hoc inferitur quod sunt tres uirtutes morales necessarie ad hoc ut quis dicatur bonus uirtuosus una que prefigat animum ad preferendum bo-



num honestum nalli. Et hec ē iusticia. ff. de in  
sti. et iure. l. iusticia iusti. e. §. iusticia xii. q.  
ii. cum deuotissima. Alia firmans animus ad  
preferendum bonum et honestum delectabili et  
hec est temperantia ut vi. disti. sed penlandus  
ē palam de consuet. nam concupiscentia. Alia  
firmans animum ad substinendum passiones quod  
incurrendum malū culpe et hec est fortitudo  
C. de athlet. l. i. di. x. C. de his que non imple.  
stipen. l. i. vii. q. i. Sibi etiam et hec fortitu-  
do de qua est sermo. Et merito hec dicuntur  
cardinales quod sunt de necessitate boitatis hu-  
mane et quelibet istarum custodit seipsum. et  
qualibet aliarum tolle vel tollit exemplum.  
mulier temptata de adulterio per promissio-  
nise defendit per temperantiam. ff. de ritu.  
nupt. l. palam si temptetur per terrorem ab  
isto se defendit per fortitudinem xxxii. q. v.  
lucrecia et ca. fieri. et ca. finge. xxiii. q. i. nō  
satis. Sin autem temptetur per numera ab  
ista se defendit per iusticiam xii. q. ii. cum de  
uotissimam. Potest etiam exemplificari  
fortitudine. nam si propter timorem dubitat  
ab ista se defendit propter fortitudinem ut l.  
ca. lucrecia et ca. finge xxxii. q. v. Si tē-  
ptatur per delectabilia tunc defenditur per  
temperantiam xlii. q. v. non pōt et cap. nec  
solo. et ca. qui uiderit et nō machaberis. Si  
propter munera tunc defendit iusticia quod in-  
stum est defendere bonum honestum tāq. spi-  
rituale. l. q. i. quā pie. de symonia per totum  
Si falsis rationibus tunc defendit se prudē-  
cia et sic una cardinalium firmat animum ut  
preferatur bonum honestum utili ut iusticia.  
Alia ut preferatur delectabili ut temperantia  
Alia ad substinendum propter bonum tuen-  
dum et malum culpe excludendum ut forti-  
tudo. prouidentia autem ceteras regulat sic  
debet esse in cardinalibus.

#### Capitulum xxvi.

Iterius est sciendum quod bellum  
sumitur dupliciter uno modo per  
actu bellandi hinc inde ut sumi-  
tur. ff. de captiuis et postli. re. v.  
l. in bello et l. postliminiuz. C. de gladiis. l. una  
li. xi. Alio modo sumitur pro qualibet expec-  
tatione corporalis periculi etiam si non sic ac-  
tualis in uasio et hoc si periculi esset cui pos-  
sit uerisimiliter resisti alias non esset bellum  
ut in latrone suspendendo et alio iustifican-  
do. Si bellum accipitur pro actuali inuasi-  
one hinc inde facta fortitudo non est solum  
circa illa pericula. quod tunc non esset cardina-  
lis cum multi sunt uirtuosi qui in talibus ex-  
ercitati non sunt. Sin autem sumatur se-  
cundo modo tunc fortitudo uertatur circa  
ista pericula generaliter sicut dicimus in muli-  
ere que substinet pericula propter euictionem  
castitatis. i. non est bellum primo modo sum-  
ptum sed secundo sic et tamen est fortitudo.

Notandum tamen quod fortitudo non est circa  
quelibet bellica pericula. Nam si aliquis iua-  
dit aliquem et defendit se non est fortis quia  
tunc canis esset fortis fortitudine. sed quod sub-  
stinet pericula bellica propter uitam malū culpe  
tūc est fortis unde dicit philosophus quod non est fortis  
propter necessitatem huic etiam casu. xxiii. q.  
liii. Nabuchodonosor et c. de iuriis de pe. di.  
li. Sic enim tunc concludit solus questio-  
nis proposita cum querit an fortitudo sit cir-  
ca pericula mortis et bellica et dicendum est quod  
non ut exemplatum est in muliere. Secundo  
modo quod extremus actus fortitudinis sit cir-  
ca mortis pericula uidetur quod sic quia uirtus est  
circa difficile. Tertio modo quod inclinatur ad susti-  
nendum mortis periculum si casus occurrat di-  
cendum quod sic et extenditur circa ultimus po-  
tentie primo celi et mundi. Pondera in quo  
dicit quod circa mortis periculum est actus extre-  
mus fortitudinis. Nam mors constantissimos  
terret animos et est propria passio in rerum fortium  
et ultimum terribilium secundum philosophum et uide philosophum  
tertio etichorum dum dixit fortitudo est ag-  
gressio terribilium ubi mors imineat propter  
bonum commune saluandum. Et pondera quod  
dominus pater meus sapienter loquitur more suo  
dum dicit secundo modo inclinatur ad susti-  
nendum mortis periculum si casus occurrat.  
Pondera uerbum si casus occurrat si trade-  
ret se quispiam morti ut se ostenderet iocem  
non esset fortis ut antiqui faciebant quia ad  
hoc ut fortitudo sit uirtus requiritur quod tendat  
ad debitum finem ut uirtus utar bar. in. l. si quis  
filio. §. eius qui. ff. de iniusto et irritato testamento.  
unde solitus sum dicere quod deus est remunerato-  
r aduerbiozum non autem adiectiuorum secundum  
glossam in. c. i. de collu. detegen. glossa in. c. mochi  
xvi. q. i. unde quis fortis non adest si semet  
ipsum occidit quia circa mortem bene si utitur  
actu fortitudinis Sed si uoluntate dei ad  
mortem deuenio et dato quod nobis ut inquit  
philosophus sit naturalis institutus appetitus uite  
tamen altiora inspicimus et hic inferiora uili-  
pendens dicere corde et ore. Cupio dissolui et  
esse cum christo ut magnus aiebat apostolus tūc  
est fortis quia fortitudinis actu bene uideretur  
circa mortem. uti. Nam non sufficit ieiun-  
are sed oportet bene ieiunare.

#### Cap. xxvii.

Ad queritur quid sit principali-  
us fortitudinis bellantium an ex-  
pectatio hostium an aggressus eorum  
Et uidetur quod aggressus sit principalior actus  
fortitudinis. Primo quia ut inquit philosophus secundo  
ethicorum tractatu de liberalitate uirtuosius  
est dare quam accipere. Scribitur etiam ecclesi-  
asti. iiii. c. Non sit manus tua ad accipie dum  
profecta et ad dandum collecta hinc quod  
scribitur beatus est dare quam accipere xvi. q. i.  
predicator de donat. c. i. ergo a simili uirtuosius  
b 3

est aggredi & expectare quia aggrediens dat expectans recipit preterea uirtuosus est bene facere quam bene recipere ut idem philosophus probat. Nam si melius est facere quam pati in genere uirtutum. ergo bene facere melius quam bene pati. consequentia tenet per locum a contrariis qui est ualidus in iure. ff. de neg. gest. l. super fluitate. Sed aggrediens bene dat expectans bene recipit ergo uirtuosus est aggredi. Preterea est melius bene operari quam non operari turpe. Iuxta illud non sufficit abstinere a male nisi et bonum faciamus. Nam illud scilicet bene operari bonum meliorem ducit finem. Cum in actibus his finis ponderetur ab illo fiat nominatio quam tenet per locum a fine qui est ualidus in iure. ff. de re milit. l. si quis. ff. de iure filii non intelligitur. §. si quis palam. ff. communia pre. l. receptum. ff. de auro et ar. le. l. si non sit. §. perueniamus. Sed aggredi est bene operari expectare est non operari turpe. l. non fugere. ergo uirtuosus est aggredi & expectare. Preterea uirtuosus est quod difficilius. Nam et l. responsum aliter non emanat nisi super difficili et dubitabili. ut. l. quod labo. ff. de car. edi. et l. i. in fi. ff. ad municip. Sed aggredi est difficilius quam expectare. Nam homo sensus expectare potest non autem aggredi. probatur maior per eundem philosophum tractatu de fortitudine. Nam actus fortitudinis specialiter est circa difficultia et terribilia. Preterea illud uirtuosius quam amabile. Nam actus uirtutum de sui natura sunt amabiles ut idem philosophus et probatur. hoc de pe. di. ii. et ca. proximos. Sed aggredi est amabilius quam plures utilitates afferit rei publice. et plura in eodem genere preualent paucioribus in autem. de consang. et uti. fra. in prin. de sen. excomunica. cum procurator. iiii. q. iiii. engel. tendum de offi. deleg. prudentiam in principi. quia inimicos expellere est utilius quam ipsos expectare. Preterea illud uirtuosius quod est laudabilius quia uirtus moralis est bonus laudabile sed aggredi est laudabilius quam expectare. Nam regulariter plus laudantur aggredientes quam fugientes. In contrarium est textus philosophi. iiii. ethicorum tractatu de fortitudine ubi dicitur quod principalior actus fortitudinis est insistere. Idem ibi albertus et aristoteles. Pro uidentia huius questionis est aduertendum quod secundum dictamen ratione ratio non semper est aggrediendum nec semper fugiendum nec semper expectandum. immo quandoque expedit aggredi quandoque fugi quandoque expectare. Ex quo apparet quod fortitudinis triplex est actus scilicet aggressus fuga et expectatio et aliquando fugiens sit fortis. patet. nam pericula supra hominem sunt fugienda. Si enim unus solus uellet aggredi ut ipsos aggredientes expectare non esset fortis sed audax. et temerarius ut idem philosophus ibidem dicit. Triplex est ergo actus fortitudinis scilicet aggressus fuga et expectatio et inter ista minus

est fuga hoc probatur. Nam ille actus qui est inter ceteros minimus est inter ceteros minus difficilis. Cum ars et disciplina sit circa difficultia ut fugere est facile quam aggredi et expectare ergo et cetera. Preterea ille actus est minus uirtuosus qui assumulatur uicio prius probatur quia uirtus assumulatur uicio posteriori probatur per locum ab extremis qui est ualidus in iure ut. ff. comuni di. l. arbor et l. i. ff. si quis in ius di. non obtempera. et l. qnare. ff. de sta. ho. Sic est in proposito. Nam per fugam assumulatur timori quod est prius uicium quam sit audacia ut idem philosophus ibidem. Sed o dies quod expectatio est actus principalior hoc probatur. Nam uirtuosus est bene facere bonum quam bene recipere bonum ergo uirtuosus est bene pati quam bene facere malum tenet consequentia per locum a contrariis qui est ualidus in iure ff. de act. emp. l. iul. §. pcur. ff. de instito. l. sed si pupill. §. si institutoria. ff. de signi. l. bec ubi. Sed aggrediens bene facit malum aggressus expectans autem bene recipit malum ab egrediente. Preterea ille actus est principalior qui est difficilior hec pluries. a. probatum est. Sed expectatio est difficilior quam aggressus. Probatur hoc. Nam fiat aggressus sit in modum fortioris et in spe de euadendo aliter autem ratio non daretur aggressum si non esset spes euasionis sed expectatio sit in modum minus fortem erga fortiores. sed difficilior est bene se habere cum fortiori quam cum minus forti ut clare confirmatur. Nam in expectando oportet moderari timorem magnam cum tristitia corporalibus. Sed aggrediendo non expedit tantum moderari ergo et cetera. Preterea expectatio et sustinere denotant diuturnitatem et perseverantiam et in genere boni dicitur quod diuturni melius de pe. di. qui irrisor et c. penata et c. non reuertebatur. ff. de inrem uerbo. l. si per patre. §. et uersus. Sed aggressus denotat quandam impetum parum durabilem puenientem ab iracundia ut. l. si adulterium. §. si impatores. ff. de adult. et l. grecus. C. eo. et regula quod colore de regl. iur. Preterea expectatio facit pericula mortis esse aliter aule presentia et illa tunc difficultia et timibiles ut dicit philosophus in rethoricorum ergo Inferitur expectationem actum principalem fortitudinis licet vulgares non ita indicantes contrarium sapiant. Si autem quod predicti fugam actus fortitudinis uidetur obstare in hoc tractatu scripsi. in articulo de pertinentibus ad ducem et milites ubi dixi quod milites fuare debent iuramentum quo iurauerunt non recedere patet ex iam dictis. Nam ubi sunt pericula supra hominem fugiendus est. xxii. q. iiii. displicet Jo. viii. Mathei. x. transumptum. vii. q. i. §. hoc seruandum. Ubi autem sunt pericula non supra hominem sed est aliqualis spes tunc procedunt statim dicta. Ad allata in contrarium patet ratio discurrendo per singula uno tamen addito uidelicet quod vulgares



plus laudant et amant aggredientes quam aspectantes hinc est quod dicitur prius ibidem nihil prohibet milites stipendarios esse quamvis fortes. Nam illi ad modicum lucri vitam mutant et fugiunt et aggrediuntur sine dictamine rationis. Sed quero quot gradibus fortitudinis quis utatur in bello. Solutio sex sunt similitudines mere fortitudinis que est uirtus moralis sita inter audaciam et timorem. Et istis sex utuntur milites in bello. prima similitudo propter quam milites uiriliter aggrediuntur est propter gloriam et honorem uidentes quod tales solent laudari et timidi uituperari et hac. C. de re militari libro xii. ff. ad l. aquil. lege qua actione. §. si quis in collucatione de pu. indic. per totum. Secunda est quod aliqui sunt fortes propter timorem pene corporalis uel pecuniarie que imponi possunt timidis et fugentibus in bello et ista uocatur pollicita quod inter cunctas talis seruilis est de pe. di. li. sicut secta. Tercia est que uocatur militaria quod homines sunt fortes quia sciunt artes bellandi sicut theotonicus et alii experti stipendarii inducit experientia rectorum magistrorum. ff. de legibus. l. seruus. §. comatricibus et c. §. si sit de elect. li. vi. Et ut dicitur philosophi in tractatu de fortitudine stipendarii pugnant cum aliis sicut armati cum inimicis et ista faciles sunt ad adfugiendum. hodie tamen se facilius expediunt quia leuant digitum et trahunt barbutam et se reddunt et statim dimittuntur ut est mos eorum inter se. Quarta est quia utuntur aliqui propter finem rem. Nam si hoc est res impetuosa ad periculum et ista aliquando inuit in bellis quod homines sunt audaciores et hanc inducit impetus iracundie ut. l. si adulterium. §. imperatores. ff. de adulter. et l. gracchus. C. e. et l. quod calos. ff. de reg. iur. Quinta similitudo est quod homines utuntur fortitudine in bellis propter spem. nam aliqui propter spem uictorie uiriliter aggrediuntur igitur enim preponderat spes potentie scilicet rationem de consiliis. nam concupiscentiam. vi. di. pensandum. Sexta est propter ignorantiam. nam aliqui aggrediuntur expectantur uiriliter ignorantes pericula immineri qui tamen fugerent hoc scito ibi non uident quid agunt ad instar infantum. c. de ful. mo. l. i. ff. ad l. coene de sicca. l. infans. Istis similitudinibus milites regulariter utuntur in bellis. Inter istas autem fortitudines si uis uidere que magis attingunt uirtuti. debes attendere quod omnes iste sunt similitudinarie fortitudinis nature. nam in uera fortitudine sicut in qualibet uirtute oportet quod opus fiat scienter. nam ignoranter operantium nulla est uirtus quod prudentia que est habitus intellectus. regulare debet omne opus uirtutis. Secundo debet eligi. tercio quod eligatur propter bonum intrinsecum. quarto quod operetur firme et durabiliter. quinto quod delectabiliter. sexto quod opus debet esse difficile. Nam ars fit

circa difficulta. hec omnia requiruntur in uera fortitudine circa aggressum uel expectatorem alicuius terribilis et difficultis per hoc patet que supradictarum magis assimilatur uere fortitudini et que non. nam omnes preter ultimam assimilantur in eo quod scienter et sic ultima est nunc similis in eo quod eligens. Alie conueniunt cum uera preter illam que fit ex furore. In eo autem quod propter bonum intrinsecum omnes deficiunt a uera. Nam prima est propter bonum extrinsecum utpote gloriam. Alia propter fugam pene. Alia propter spem uincendi. Prima autem pollicita que est propter honores et gloriam magis assimilatur uere propter finem honorabilem. Nam honores sunt significatiui uirtutum et isti plus operantur tendendo ad bonum publicum. Nam uirilius bellis insistant ut exemplar prius de hoc toze in bellis sic se habente. Tu pondera quod deberemus habere rationem temporis ad animaduertendum quis dicatur fortior actus fortitudinis an aggressio an expectatio an fuga.

Nam glo. in. l. apud antiquos. C. de fur. dixit distingue tempora et concordabilis scripturas uide. c. fraternitatis. xx. xiii. di. quem tex. alfat abbas in. c. non debet de consangu. et affini. Nam sicut medicus obstat tempore ita et iurisperitus nam hodie unum est licitum quod cras erit illicitum ideo lex. unus hodie statuit alia die oppositum. l. i. C. de cada. toll. et ibi bal. nam si nec occidit hominem et reputatum fuit ad iusticiam ratione temporis abraham non solum homicida sed filicida placuit deo et hoc respiciendo non ad opera sed ad tempos. Tullius ad petum scribens dixit manio me ad hec tempora et teret ait nam hic dies aliam uitam affert et alios mores exposulat unde sapienter dixit Tullius li. i. offitium dum mutantur tempora mutatur et officium nam ratione temporis aliquando preclarum est fugere quam aggredi et contra et sic de lingua unde legitur in Scipione affricano i his coriis quod cum hoste non aliter debere consilium quam aut si occasio aduenisset aut necessitas incidisset et sic in istis uidetur animi ad tempus habuisse sed nonne fabius maximus cunctando et ut ita dicam fugiendo restituit Imperium romanis ut nostre canunt historie. In religio sequor omnium scientiarum illuminatorum dominum paupum meum. Et si quicumque inuidus diceret me mendacium predicare hoc quod retuli sua comprobant studia pariter et opera que in manibus relictis sunt nostris.

#### Cap. xxviii.

Et ideo quero An fortis in bello aliquo casu magis debeat expectare mortem quam fugere de bello ubi per fugam euadere posset. Et uidetur quod non sit mors expectanda. Nam istud magis est eligendum quod delectabilius

et illud minus quod minus primo rethoriceus dictum est philosophi. Sed est delectabilior uita quam mora. ergo eligibilior est fugere et uiuere quam expectare et mori. Oppositum uidetur dicere philosophus iii. ethicorum tractatu de fortitudine et tercio tractatu de uoluntario et uiolento et etiam tractatu de magnanimitate ubi dicitur quod prius est moriendum quam aliquid turpe committendum. Solutio pro euidencia questionis est aduertendum quod questio potest habere duplex fundamentum. unum ueritatis et fidei. ut supponamus aliam uitam et beatitudinem et secundum hoc fundamentum quod non habet grande dubium. Nam si aliquis pugnaret contra infideles et propter fugam suam multi perirent fideles et solus saluaretur tunc preeligienda esset expectatio et mors. Et est ratio nam fugiendo consequitur uitam corporalem. Expectando consequitur uitam anime que est sine comparatione nobilior ergo preeligienda. Secundum fundamentum potest esse naturalium et uiuentium secundum legem nature ut non supponatur ulterius uita. et tunc questio habet dubium et opiniones uarias.

Aliqui dicunt quod mors expectanda est quod contingere potest multipliciter. uno modo quod euidenter certum sit mortem euenire debere cui expectatione nec spes sit de salute non tantum fuga. Alio modo quod licet sit aliqua euidencia mortis tamen spes aliqua haberi potest de uita sicut fuga. Isti secundo casu dicunt intellegendas auctoritates Aristotelis et aliorum philosophi. qui dicunt quod magis est moriendum. id est uiriliter pugnandum. Primo autem casu dicunt nullo modo mortem expectandam. probant hoc sic. nam de duobus malis minus est eligendum xiii. di. uerum et principium in moralibus. Sed minus malum est fugere quam expectare et mori ergo quod sit minus malum probatur. nam illud est minus malum per quod pauciora bona perduntur quam illud per quod plura. Sed in morte omnia tolluntur ut in autem. de nupt. 6. deinceps et li. philosophorum.

In fuga perditur solum bonum fortitudinis moralis ergo etc. Preterea si melius esset mori hoc esset quod mori esset actus uirtutis. Sed hoc est falsum. Nam actus uirtutis est felicitas uel ad felicitatem tendens. Sed mors est felicitatem destruens ergo etc. Preterea si hoc casu eligenda esset mora hoc esset quod fortitudo que est uirtus moralis ad hoc inclinaret sed hoc est falsum nam uirtus moralis non tendit ad corruptionem nature sed ymmo ad preservationem ipsius non ad hoc facte sunt leges iudi. facte sunt. sed mors tendit ad destructionem in autem. de nupt. 6. deinceps. Preterea si hoc deberet quis magis eligere. aut hoc fore propter bonum proprium aut alienum. non propter proprium quod in morte omne bonum extinguitur ut supra tactum est. non alienum quod non tantum bonum potest alteri conuenienter querere quantum sibi perdit cum seipsum plus

aliis debeat diligere ut. l. preces. C. de scrui. et aqua. Confirmatur. nam secundum ueritatem et fidem apparet quod uirtuosissimi milites fugiebant in bello ut tempore Karoli magni.

Alii dicunt totum econtra scilicet quod potius expectandum et moriendum quam fugiendum et hoc probant. Nam quilibet scit se de necessitate moriturum esse. Si ergo moriatur fortis non perdit nisi id in quo credit mortem presentem differre a futuro. Sed non differunt in hoc quod est amittere bona uirtutis et conseruare. Sed differunt in hoc quod est diutius retinere et minus dimittunt tunc eruant sic illud eligibilior esse in quo plura bona acquirantur et pauciora perdunt. Sic est in proposito ergo. Probat hic minor. Nam si moriatur queritur actus fortitudinis qui est nobilissimus si fugit querit nisi continuatōem prius habitōrum donec duret uita et sic quis tempus. Confirmatur. Nam certum est quod consistentes circa delectationes corporales magis eligerant quod modico tempore uiuere penam. Ergo sic in delectationibus animo hoc potius est eligendum. Opinione primam credo ueram. Nam ut dixi in alio articulo actus fortitudinis sunt aggressus fuga et expectatio. Nam non semper insequendum nec semper fugiendum nec semper expectandum ymmo cum diccamine rationis. Distingue ut super primo. c. et sequor paupem meum hic. Nam uirtuosus est aliquando euitare mortem dato quod debeat mori ut magnus fecit paulus apostolus cum timeret interfici a iudeis petiit militem a pretore quorum presidio illius seruaretur et tamen nihil aliud cupiebat nisi mori et esse cum christo Ideo illud egit quia tempus non suadebat non longe exemplum petamus. Nam prius saluator noster qui uenit crucifixus occidi hoc in mundo pro nobis peccatoribus tamen cum a iudeis lapidibus molestaretur abscondit se et exiuit de templo cum temporis qualitas hoc suauit quia nondum uenerat Calix passionis. Aliquando pulchrius est mori nam ut solitus est de Cathone dicere Ualerius magnum hominibus dedisti documentum o Catho quanto potius debet esse philosophus dignitas sine uita quam uita sine dignitate et ne discedas a distinctōe temporis prefata tibi sit cura rogo.

#### Ca. xxix.

Quarto queritur pone dux exercitus mandauit ne quis praparet in hostes sub pena capitis quidam strenuissimus miles cum magna comitibus militum quibus imperat cetera mandatum ducis prapripit in hostes et ipsius strenuitate totaliter hostibus conflicturn dedit queritur an capite piendiū sit uidetur quod sic Nam dicit textus in bello qui rem inibitā a duce fecit aut mandata non seruat capite punitur etiam si rem bene gesserit. ff. de re mili.



*l. desertorem. §. in bello pbatur pūria q̄ uolunt astrictus obedientia ad ipsam teneri. ff. mandati. l. si remuneranti. §. si pignus. 1. l. si pculia. ff. ad mace. l. sed. 1. si. §. ii. ff. ad. l. acquit. l. si seruus seruū. §. si puerum. C. de neg. gest. l. si. Confirmatur. Nam malus nō exculatur ppter bonum quod sequit. l. vi. di. c. vii. de pe. di. l. non sufficit. Cōfirmatur. Nam facta non sunt ab euentu nōnda xl. di. c. non est xxiii. q. v. de occipendis. ff. de neg. gest. l. sed an ultio. §. i. ff. man. l. qui mutuam. §. sipt. Ergo ab hoc enēto insigni. non fiet notatio ymmo ab obedientia puenienti. In contrarium uidetur. nam propter periculum 7 factum in signo effectualiter perpetratum remittitur pena que alias imponi deberet aliquid attemptanti contra legem uel mandatum principis probat tex. ff. de penis. l. ad bestias xxii. q. ii. qui cū patriarcha Solutio audio q̄ dominus richardus malō hōa determinauit q̄ deliquēs propter magnā periciam penam euadit per. l. ad bestias. 7 in duci poterat dictum. C. qui cum patriarcha Tamen illam opi. non puto ueram ymmo ap te est contra textum. l. desertorem. §. i. bello ff. de re mili. Nec obstant iura in contrarium allegata. nam aliud est quem incidere in penam. l. uel hominis. Aliud est post pene cōmissionem ipsam a picipi remitti posse illa non probant quo minus pena cōmittatur. s̄ bene probant ipsam a principe posse remitti illa iura non probant quominus pena cōmittatur. sed bene probant ipsam a principe posse remitti. Et sic supponunt illam cōmissam ut probat utriq̄ textus si bene inspiciatur. Tu pondera q̄ sapienter loquitur dominus p̄uus meus. iura sua probant 7 responsiones ad contraria habent spiritum 7 cōprobo bistoria. nam postumius dictator aulum postumium filium. q̄ non suo iussu sed sua spon te p̄sidio progreffus hostes fuderat uictorē secari feriri iussit. 7 tamen cum puerum lris 7 luuenem armis instruxerat 2c. Jtē mali itozquati latino bello filius cum esset puocatus ageminio mecio duce tusculanorū ad dimicandum patre ignaro dekederat 7 gloriosam uictoriam reportauerat arripi a litore 7 in modum hostie pater iussit feriri 7 mactari 2c.*

### Caplm xxx.

*Quinto quero pone dux belli capitur ab hostibus nunquid ē uenia concedenda an ueniat puniendus. Et uidetur q̄ uenia sit 2cedenda per capiculum noli in fi. xxiii. q. i. Ecce tex. sicut de bellati 7 resistētī uolētia debetur sic uictori capto uenia conceditur. hoc probatur. Nam dicit textus q̄ tenetur quis parcere hosti suo. ii. q. vi. quanto in fi. Ecce tex. quia sicut in contumacia p̄stētīb?*

*scenos non esse conuenit sic humilibus 7 penitentibus locum uenie negare non debem? In contrarium dicitur. Nam captus efficiē seruus hostiū ut. l. hostes. ff. de captiuis. 7 ff. de v. signi. Soso. Credo p̄limam partē v̄az uidelicet q̄ uenia sit concedenda humiliato 7 resistere uolenti si p uenie concessionē pacis perturbatio timeatur Tunc enim uenia plectēdus est hoc pbat tex. in. c. nolit in si. ubi dum dicit maxime in quo pacis pturbatio non timetur. Et exponit hug. 7 archi. max. inep tātum ut sit sensus līe q̄ solum sit concedenda uenia ubi non timetur pacis pturbatio als non fertur q̄ p illam expositionē ka rolus fecit amputari capud Conradino. Tu pondera quia dominus p̄uus meus bñ logē. Nam Seneus Pompeius regi Armenie tigra ni pepcit 7 diadema q̄ abiecerat capiti reponere iussit iudicans eque pulchrum esse 7 uincere reges 7 facere reges*

*Rubrica De his qui ad bellum accedere tenentur 7 de accidentibus non strictis.*

### Cap. xxxi.

*Extio uidendū restat d̄ his q̄ tenentur ad bellum accedere Et quid de accidentibus nō astrictis. Et queritur primo An si dominus moueat iustū bellum teneantur uasalli accedere cū armis 7 equis 7 in expensis propriis 7 uidetur q̄ sic quia vigore iuramenti tenent iuuare dñz ut. xxii. q. v. de forma. Innoc. in. c. sicut de iure iuran. tenent q̄ non teneant nisi ex pacto speciali ad hoc ut sint obligati cum ipsi nō tenentur ad munera psonalia. Conclude hoc q̄ uasalli non tenentur d̄ iure nisi ad ea que continentur de casu in forma. xxii. q. v. nisi ex speciali conventionē ad aliud obligentur. Cōpro opinionem dñi p̄ui mei q̄ stipēdiis suis quis militare non debet. c. cum ex officii de p̄script. fm dñm abb. in. c. i. ne p̄lati uices suas. Nam dignus est mercenarius mercede sua ut magn⁹ predicabat apostolus in. c. quicūq̄. xii. q. ii. de. q. inde spe. in ti. de feudis. §. qm̄ v̄li. xxiii. queritur.*

### Caplm xxxii.

*Secundo queritur pone q̄ baro regis yspanie moueat guerram ipsi regi 7 mandet omnibus suis ut iuuent ipsum in bello contra regem. nunquid tenentur cum iurauerit ipsi iuuare contra omnem hominem 7 uidetur q̄ sic nam graue est fidem fallere in ca. i. de p̄is ca. ueniens 7 ca. se. de iure iuran. l. i. ff. de cōsti. pec. l. i. ff. de penis. Etiam uerba generaliter prolata generaliter sunt intelligēda. ff. dele. p̄stan. l. i. §. generaliter. Etiam quia*

iuramentum astringit non a iuramento soluantur xv. q. vi. ca. ii. r. iii. Contrarium est verum. Nam baro mouens guerras regi incidit in l. iuli. maiesta. l. i. r. ii. ff. ad. l. iul. maici. vi. q. i. §. verum ibi quisquis cum militibus lxxix. dl. ca. ii. Nam rex hyspanie est princeps in regno suo etiam opem non fert q ad peccatum iuuat xlii. q. vi. sed res necesse centum illius eos excusaret ff. de act. r. obli. l. seruis xi. q. iii. non semper r. ca. qui resistit r. ca. si dominus nec statim ad hoc ligat qz non est inuentum ut sit iniquitatis vinculus xxii. q. iiii. Inter cetera de iure iuran. ca. i. li. vi. faciunt que nou. ca. peticio de iure iu.

Tu pondera qz opi. domini proximi mei non est infauis quia in quolibet iuramento intelligitur excepta publica utilitas uidetur exclusio maiestas dei pape vel imperatoris ut in c. peticio de iure iuran. Et probatur in l. imperiali. §. si. de probalib. feud. per sede. r. ibi bal. dicens qz in quolibet iuramento intelligitur excepta persona regis si illud iuramentum prestat a subdito regis opinionem suam tenet spec. in titu. de feudis. §. quoniam v. xv. queritur.

### Capitulum xxxiij.

Erzio queritur baro regis hyspanie mouet guerras alteri baroni. Rex hyspanie mouet guerras regi granate. baro mandat hominibus

quatenus iuuent ipsum Rex autem mandata eisden ut iuuent cum r. concurrunt mandata. quem primo iuuare tenentur. uidetur qz primo baronem. nam baroni sunt subiecti ratione fidelitatis r. ratione iuris dictionis ut in aute. de questi. §. si vero colla. vi. Regi autem sunt subiecti ratione iurisdictionis generalis tantum. r. sic due rationes vincunt unam. ut in aute. de consa. r. uteri. fre. §. i de re iudi. ca. cum eteni. ll. vi. xlii. di. ca. i.

In contrarium uidetur. Nam uocati a rege sunt uocati ad maius tribunal. r. sic preferendum ut ff. de re. iud. contra. pupillos. §. si. xvi. di. i. si episcopus. Etiam qz rex uocat pro comuni bono r. defensione corone. Et sic iuregen. obediendum ff. de iusti. r. iure ueluti. l. di. iusgentium xxxiij. q. iiii. fortitudo r. q. viii. ca. omnium r. capitulo dimissa. Nam pro defensione patrie licitum est patrem iter uicere ff. de reli. r. sup. fun. l. numme. r. hec uera. Teneo opi. proxi mei r. cum tenet spec. in titulo de feudis. §. quoniam v. xvi. queritur.

### Capitulum xxxiiii.

Utrio queritur quid de uasallo non ligio duorum qz esse potest ratione diuersorum feudorum de supple. negli. pla. c. grandi. li. vi.

si uterqz dominorum simul requirant cum ut iuuat ipsum in bello an tenetur utriusqz an alterus r. quem iuuare tenetur. Apparet qz neutrum cum concursu se impediant ff. de iusi. l. quotiens de pe. di. l. §. hec idem v. xpian. ait. i. q. i. c. pmo. Apparet qz utriusqz alias pderet feudum quia difficultas pstationis ex pte pmissionis non pimit obligationem ff. de v. obli. continuus. §. illud. Itz pot qz duobus dominis se iuuare ut ff. de op. le. l. duoz.

Quidam dicunt locum esse gratificationi exeplo fui duorum dominorum qui si uiderant utriusqz dominum se interficere iuuare poterint quem uoluerint ff. ut fult. l. si quis in grau. §. si cum omnes. Illi dicunt qz iuuabit priorem dominum r. cui primo iurant ut in usi seu. §. prohibi seu alie. l. impialem. §. illud. ff. loca. l. in opis. C. qui po. in pi. ba. l. ii. Nam priorem fidelitatem seruare tenet. l. di. quia tua q. cle uel mona. c. unico. Tutius tamen est qz primo seruiat personaliter Secundo per substitutum si hoc potatur natura feudi. C. de cadu. toll. l. i. §. si. autem. Nec obstat qz iurauit secundo salua fidelitate primi qz est de natura hominis non ligii quia seruando se per substitutum non nocet primo qz fuit saluatum iuramento scdi

Pondera qz dixit bal. in l. i. §. ne autem C. de cadu. tollen. in. iiii. col. Et pondera qz forte deberet esse locus gratificationi p. c. cum autem de iure patro. in ar. uel deberet forte terminari ar. capli. fors. xxvi. q. ii. vid quod dixit petrus de anchorano in. c. i. §. eo qui mit. in pos. li. vi. vide no. in. c. in nostra de testibus r. forte non esset inconueniens dicere qz deberet iuuare illum qui iustum moueret bellum contra alium dominum ar. capli. pmi. xxiii. q. vi. in vss. non enim opem fert. r. c. Et sic deberet subuenire meliori per ea qz habentur in locis antedictis.

### Capitulum xxxv.

Utrio queritur an uasallus tenetur iuuare dominum contra patrem uel patrem contra filium

Bo. format questionem. xxii. q. v. c. de form. r. tenet qz sic. Nam filius solum uniculo nature obligatus est patri. Sed uasallus domino uniculo iuramenti ut in p'dicto c. de forma probat tex. in usi seu. in ti. que ad modum seu. amit. glosa aliquantulum sentit contrarium in. c. quoniam multos xi. q. iiii. Putarem pendendum qualiter impendendi subsidii an cuius duarum ciuitatum tenentur unam iuuare contra aliam. Solutio dic ut dictum est in uasallo duorum dominorum Pondera que no. no. doct. r. maxime dominus abb. in capitulo peticio. de iure iuran. Et sto cum opi. domini abb. ibi.

### Capitulum xxxvi.



Eptimo queritur dominus vult  
ire ad partes remotas. pone 'ul-  
tra mare ad pugnandum cum bar-  
baris nunquid uasallus uocatus  
ab eo tenetur ipsum sequi ad bellum. Solu-  
tio. si dominus est talis status et conditionis  
quod predecessores et ipsi consueuerunt illuc acce-  
dere et uasalli ipsum sequi tunc tenentur ex  
exemplo liberti qui tenetur ad operas consuetas  
scilicet de operis liber. l. opere. et l. penul. ff. de pi-  
gno. act. l. qui uniuersorum prestabuntur tibi  
a domino sumpt. moderati arbitrio boni uiri  
Sin autem sit talis qui non posset nec con-  
sueuit tunc secus. ff. de oper. liber. l. quod ni-  
si. §. si. ff. de arbit. l. si cum dies. §. si. arbitri.

Pondera quod spe. idem quod proauus meus hic  
tenet amplectitur in titulo de feudis. §. qui  
uersi. xxlii. queritur. Uide quod in simili scri-  
bitur per doc. maxime per dominum abb. in  
ca. i. de contagio leprozorū dum facit ques-  
tum an uxor debeat sequi uirum uagabundū  
uide abb. in ca. ex tunc de clerici. non resi. cur.  
ca. si. uide glo. xxlii. q. ii. sicut euitabile. ui-  
de roma. in rubrica. ff. de ma. uide bal. in l. q.  
manumittuntur. C. de operis liber. ymo. i. ru.  
ff. de ma. uide que habentur in. ci. qui mī.  
accusare possunt xlii. q. ii. c. unaqueque per Cy. in  
l. iii. C. de lutoribus mile. bar. in l. menia. §.  
i. de annuis le. bal. et ange. in l. si cum dotez  
§. si maritus. ff. de solu. ma. uide glo. in. ca. si ux-  
orem xxlii. q. v. uide nico. de neapo. in l. q.  
nisi. §. i. de operis liber. per spe. in ti. de com-  
pe. indu. adicio. §. i. uer. sed quid si debitor  
uagatur et. bar. in l. i. C. de colonis tracen-  
sibus li. xi. Et pondera unum quod dixit bal. l.  
ca. i. §. i. quo tempore miles inuestituram pe-  
tere debet in. iii. col. ubi si dominus uolat uas-  
allus non debet nolare.

#### Capitulum xxxvii.

Crauo queritur quid de suis an  
teneantur ubique sequi dominum  
ad bellum de his non est dubium  
cum in eos domini plenam habe-  
ant potestatem dāmodo domini non seruiēt  
in eos. ff. de his qui sunt sui uel alie iur. l. i. et  
li. Sed cum panis meo hic et de libertis  
adde quod liberti debent prestare obsequiū dño  
portabile et non durum et importabile ut in  
l. liberos. C. de obsequiis.

#### Capitulum xxxviii.

Ono queritur quid de libertis.  
Solutio liberti tenentur ad o-  
peras impositas nec insolite eis  
possunt imponi. ff. de ope. liber.  
lege nisi. §. finali ar. ff. de procura. lege. §. et  
hinc. §. ii.

#### Capitulum xxxviii.

Ecimo queritur quid de agricol-  
is uocati ad bellum a dominis  
teneatur accedere. Solo diui-  
diū i ascripticios et cēlitos ascripticii dicūt  
p scripturā solo ascripti vnde in ascripticiis  
due interueniant scripture una ad constitu-  
endum alia ad pbandum. Prima qua pmit-  
tunt domino soli nūq̄ a solo recedere. Alia  
qua proficitur se ascripticiū et de his scrip-  
turis in l. cum scimus. C. de agri. et cen. et  
iter hos et suos pene nlla ē dria ut. l. ne diu  
C. et. Et dico pene quia differūt in aliquo quia  
seruus alienari potest cum peculio et sine ut  
dicta. l. ne diu ascripticius non sine solo ut. l.  
ii. C. et. Item ascripticii citra domini uolū-  
tatem ordinari possunt in possessionib' quia  
bus ascripti sunt in aut. de sanctissimis epi.  
§. ascriptios serui autem non. Item ascrip-  
cii sciēte et tacente domino contrabant ma-  
trimonium nec conditionem mutant ut. C.  
de agri. et cen. l. si. Serui autem contra-  
bentes scientibus dominis et tacetibus libe-  
rantur a seruili conditione in aut. de nupt.  
§. si uo. Ex quib' luce clarius apparet quod his  
quod habent in ascripticios et eius relatiū ad  
possessiones quibus ascribantur et sic inferē  
quod prouocati a dño ad eīnea onera psonalia  
non artantur nisi aliud ex conuēctione sit re-  
ductum. Censiti autem sunt qui certe rei p-  
stande amatiū constituti sunt. C. quibus ca.  
col. l. i. etiam in hoc differunt ab ascripticiis  
quia ascripticii sunt ascripti ad certam rem  
prestandam puta terciam uel quartam fruc-  
tum. Isti autem certe rei et de his inferē  
ut. d. Pro hoc inferatur quod nec coloni nec  
inquilini necessario artari possunt. Sto cui  
proauo meo. An equiparent ascripticii et sui  
Et an equiparetur ascripticii et coloni scrip-  
si in repetit. rubric. de testis hoc. c. quam cō-  
posui dum publice sextum legerem Bononie

#### Capitulum xxxix.

Undecimo queritur quid de con-  
federatis et colligatis Nunquid  
dominus poterit cōfederatos suos  
prouocare ad bellum ut ipsius

lauare teneantur Solo Confederati sunt  
plene liberi licet ad aliqua teneantur ex po-  
to ut. l. non dubito. ff. de cap. et postli. reuerf

In his igitur tamen ponderanda est con-  
uentio et conuentionis modus ut ad unguem  
seruetur. ff. de ho. liber. §. si non uenerit. ff. de  
positi. et l. i. de pact. Verū predicat panis  
meus quod non debemus a conuentionibus re-  
cedere. c. i. de pactis. l. i. ff. de constit. pecu. et  
psalmica que procedunt de labiis meis non  
faciam irrita. Sed pondera quod si ciuitates  
sunt ad inuicem cōfederate bñitus d una  
non intelligitur bñitus de alia ciuitate fm  
bar. in l. non dubito. C. de capti. Et an sint  
licite cōfederaciones que quotidie fiunt in.

ter civitates q̄ apud nos vocantur lige vide  
bar in l. si. ff. de colle. illicitis.

### Capitulum xxxi.

Undecimo quero quid de his q̄ sūt  
subditi ratione iurisdictionis tan-  
timō non sunt autem vassalli. So-  
lutio tales agere et accedere tenentur nec a-  
gent ad perditionem q̄ hoc faciunt ex debito fal-  
sit hoc regulare dictum in quibusdam personis  
que exculantur a muneribus personalibus quo-  
rum quidam exculantur etate ut minores et  
senectute gravati ut. C. qui etate in rubro et  
nigro. Quidam infirmitate ut. C. qui morbe  
per totū qdā libe. nu. ut. C. q̄ liberorū p̄ totū  
Quidam propter professionem ut. C. de p̄fes.  
et medicis. Quidam sexu ut mulieres et simi-  
les alias stat regula. Pondera quia ratio  
est iura. Nam inferiores debent suis superiori-  
bus obedire ca. ii. de maio. et obe. et in summa  
xciii. di. et in ca. a subdiacono et vide. ca. iiii.  
xi. q. iii. vide oīo dominū abb. in ca. sicut et  
infra de iure iuran. circa finem ubi loquitur  
de vassallis. et de subiectis et cum in omnibus  
sequor.

### Capitulum xlii.

Ec autem dicta sunt de his per-  
sonis que sunt qualitercūq; a-  
stricti. Restat videre de liberis  
plene et ad bellum provocatus. p̄  
cuius evidētia est attendendum q̄ accede-  
dum ad bellum non de necessitate nec ex de-  
bito q̄ de istis supra tactus est. Quidam ac-  
cedunt plenā liberalitate quidam accedunt  
q̄ tenentur ad antea. Quidam accedunt  
propter gloriam querendam et consequendā  
in bello. Quidam accedunt q̄ locant opas  
suas si contractus locati appellari potest sti-  
pendium. Quidam accedunt solum animo spo-  
liandi ut nuncupati sacmani quasi manu cri-  
pientes ut sacco deferentes. Et de his vide-  
mus primo de primis ut de plebe libere a cre-  
dentibus. An libere accedentes obligent si  
ibi illum in cuius servitium vadunt etc. Et  
primo queritur nunquid accedentes libere  
ad bellum obligent sibi illum in cuius servi-  
cium vadunt si dampnum incidunt puta sed in  
bello perdant arma equos siue capiantur si-  
ue etiam cundo ad bellum siue redeundo.  
Solutio hic est attendendum q̄ accedentes  
libere aliquando accedunt p̄ vocati et ro-  
gati a dominis aliquando motu proprio non  
requisiti a dominis. Si accedant vocati a  
dominis tunc habent actionem mandati cō-  
tra dñm. et sic ut. d. dictū cōtingit eos aliqd  
perdere nisi appareat q̄ cā pietatis humanitatis  
vel parēte hoc faciunt xciii. q. iii. nō inferē  
da xi. q. iii. si dñs et ca. iudici. Sin autem  
opponas et dicas dominū nō teneri q̄ talia  
perduat cui fortuito de quo quis nō tenetur

de homic. Jobines. C. de pigno. act. l. que  
fortuit. Sol. iste casus fortuitus qui potuit  
et debuit provideri q̄ verisimiliter hoc con-  
tingit in bellis q̄ dubius ē eventus belli ita  
no. Inno. in capitulo sicut de iure iurando.

Pondera tamen q̄ si bellus fuisset illicitū  
non possent agere mādati q̄ rei turpis nullū  
est mandatum. l. si remunerādi gratia. §. rei  
turpis. ff. mandati ita concludit etiam hosti-  
et Innoc. et moderni in. c. sicut et. j. de iure  
iuran. Et dicit Innoc. in. c. si vero de sent.  
excomunic. et. d. abb. in. c. sicut et. j. de iure  
iur. q̄ vocati possunt agere contra vocantes  
actione mandati que contingunt casu fortui-  
to diuino vñsū contingere potuisset quasi  
vocans hoc debuit cogitare a primo. Et sic  
debet intelligi. l. inter cās. §. non omnia. ff.  
mandati secus Si dampna cōtingissent ex ca-  
su fortuito qui vñsū non fuisset cogitatus  
ut. d. §. non omnia. Hec vba sunt multi nō.  
et magnificat ea abbas in dicto. c. sicut et. j.

### Capitulum xliii.

Secundo queritur quid de cōmo-  
dante tali arme et equos p̄ cūdo  
ad bellum nunquid si perdantur  
tenetur cōmodatarius cōmodā-  
ti et videtur q̄ sic. ar. d. pr. a simili cum tē.  
Solo in hoc casu secus fm Innoc. Et est rō  
dñe quia in hoc casu cōmodatarius nō excedit  
fines mandati quia non est usus nisi ad usum  
illum ad quem initus est contractus idcirco  
non tenetur. ff. cōmod. l. si ut certo. §. sed in  
terdum. In mandato autem licet p̄stare  
potuerit tamen kiebat sibi actionem mādati  
competere quia illud evenit ex natura con-  
tractus et hec semper procedunt nisi ex pac-  
to speciali aliud sit indictum. Pōdera q̄  
alii doctores in dicto. c. sicut et. j. sequuntur  
id qd̄ hic dicitur p̄ prouum meum et. d. abb.  
ibi in. x. col. vide. l. si. et ibi bar. ff. cōmod. ubi  
cōmodatarius non tenetur sibi sine culpa sua  
usus est re cōmodata ad usum ad quem fuit  
cōmodata.

### Capitulum xliiii.

Tertio queritur quid de locante  
equos et arma Nunquid si p̄dā  
in bello aget locator contra con-  
ductore. Solo dic ut. d. i cōmo-  
dante quia non aget quia ad hoc p̄duxit nec  
fines excessit. ff. loca. et conduc. l. si quis do-  
mum. Opinionem paui mei sequitur In-  
noc. et abb. in. d. c. sicut dignum et. j. de iure  
iuran. in. x. col.

### Capitulum xlv.

Quarto queritur quid si p̄uocat  
ad bellum in itinere accedendo  
ad eius subsidium spoliatur armis  
equis et aliis rebus suis Deinde



est q mandans tenetur mandatario. Sed  
nauquid aget mandarius contra spoliante  
vi bonorum raptorum uel furti apparet q sic  
quia eius interest actione mandati mandata  
rio. Solo. si contra spoliante competunt  
actiones ille 1 ratio quia vi. bo. rap. cōpetit  
illi in cuius bonis erant rapta. ff. vi. bo. rap. l.  
ii. §. que actione. Et cōtio enim vi. bo. rap. uel  
furti non competit nisi illi qui habuit domini  
um uel possessionem uel detentionem uel ali.  
quod ius in re ut est ille cui res est pignori  
obligata 1 nondum tradita. ff. de p̄scrip. §.  
l. si gratuita. §. si quis. ff. de fur. l. si is qui  
rem 1. l. is cui spoliatus ergo competunt hec  
actiones. Poterunt tamē agere mandati cō  
tra mandantem mandans cum soluerit facit  
sibi reddi 1 cedi actiones contra spoliantez  
Et tunc aget iure cesso ut procurator consti  
tutus in rem suam. C. mandati. l. pe. 1 si. hec  
etiam tenet Juno. in p̄allegato ca. sicut d  
iure iuran. Pondera q dominus abb. in  
ca. sicut 1 infra de iure iuran. sequitur opini  
onem proui mei.

#### Capitulum xli.

Quanto queritur de accidentibus  
nō prouocatis sed motu proprio  
Solutio si animo donandi est cla  
rum ut puta pietatis humanita  
tis uel parentele tales non egent xxlii. q. iiii  
non inferendo xi. q. iiii. si dominus 1 ca. iul.

Si autem animo obligando illum cuius  
negocia gerunt tunc agent neg. gest. sed an  
ultra. Pondera q uiriliter est gestum no  
mine alicuius quis cogitur habere ratum se  
cundum q no. bar. 1 bene in. l. pomponius.  
ff. de neg. gest. in .x. col.

#### Capitulum xlii.

Exto queritur quid de acciden  
tibus proprio motu 1 ille i cuius  
subsidiū uadit tenuit 1 contra  
dicat non uult illum si talis accedens utiliter  
incipit 1 feliciter p̄elia an habeat illum i c  
subsidiū aut obligatū actione negociorū  
gestorum apparet q sic ad similitudinem  
illius qui trahit aliquē inuitum de domo ru  
itura xxlii. q. iiii. ipsa pietas. etiam q inui  
to cedi potest beneficium xl. v. di. 1 qz emen  
dat. etiam qz uidetur fuisse in sane mentis q  
tradendo ut inueter. ff. de condi. insti. l.  
quidam de pe. di. iiii. ad hec instanter.  
Sic tenet glo. in medico mendicante eliquē  
contra uoluntatem suam hec no. lxxiii. di.  
in summa. Contrarius credo in casu pro  
posito per. l. ultimam. C. de neg. gest. Nec  
propterea reprobo glo. ymō credo q uerum  
dicat in infirmo 1 medico qz infirmus p̄esu  
mitur in sane mentis cum non uult absolute  
curari sed iste qui contradicit huic non ue

niat in securu suo ad bellum non p̄sumitur  
sane mentis. Nam possibile est q non confi  
dit de eo 1 dubitat ne perdat ipsum. nec cre  
do q glo. procedat in casu in quo firmus be  
ne uellet sanari. sed nollet istum medicum s  
alium potius. tunc iudicio meo non procede  
ret glo. nec hec probant allegata supra  
Pondera ea que dixi erunt doc. in dicta. l.  
si. C. de neg. gest. 1 pondera q due limitati  
ones uidentur dare per prouium meuz ad. l.  
si. C. de neg. gest. Adde aliā p. l. nō tñ. ff. de  
appel. ubi p dampnato ad mortem postuz ap  
pellare etiam eo inuito 1 tenebitur mibi ex  
pensas reficere. Item aduerte aliam lita  
tionem quam tradit bar. in. l. sticus. ff. de pe  
cul. 1 io. an. in. c. cum. c. laycus de foro p̄pe.  
l. de eo qui condemnatus erat ad decem que  
si non solueret infra mensem amputaret ma  
nus q possum eo inuito soluerē illa. x. 1 post  
ea ab eo repetere nec potest dicere potius uo  
lebam q mibi amputaretur manus itē lita p  
l. sed 1 iul. §. q dicitur. ff. ad mace. ubi logē  
de eo qui mutuauit filio su. pecunias. bene stu  
dētī contra patris uoluntatem quia a dicto  
patre ualet repetere. Item in eo qui sepe  
lit defunctum contra heredis uoluntate qm  
repetet impensas. l. sed 1 si quis. §. 3 de labeo  
ff. de religiosis. Et uide roma. in. l. quāuis. ff.  
solu. ma. 1 no. in. l. si mulier in p̄t. col. ff. so  
lu. ma.

#### Ca. xlviii.

Estat uidere de his qui uadunt  
ad bellum quia tenentur ad an  
tidora ut puta quia simile uel ali  
ud subsidium recepit ab eo nun  
quid tales agent contra illum quem inuēt ad  
p̄dita. Solo si sic uadunt ut thema supponit  
uadunt animo dissoluenē obligationis natu  
ralis que tamen non possunt deduci in cl  
uilem nec de ea excipi potest in iudicio. l. de  
qua. ff. de iudic. ff. de heredi. pe. l. si 1 lege. §.  
consulte de testis in offic. Et sic inferitur q  
uadat nō animo obligandi cum idem act<sup>o</sup> uni  
formiter sumptus non possit pati contrarios  
effectus. ff. de §. obli. l. quia. x. de condi. inde  
l. cum pars. §. si heres 1 l. cum heres. Et si  
dicas hic non est opus dissolue quia nulla na  
ta obligatio efficax ad agendū uel excipien  
dum 1 sic non potest dissolui quod non est d  
iniustu ru. 1 irri. testō. l. Nam idem quod de  
spon. in pup. c. ad dissoluen. Solo licet  
non sit nata obligatio efficax ad agendū uel  
excipiendum ut supra dictum est tamē nata  
est talis naturalis que dissolui potest p anti  
doram recōpensationem ut iuribus statim al  
legatis 1 sic animus dissoluen. natiuitatem  
obligationis cum in obligatione requirit ani  
mus ut. l. obligationum. ff. de act. 1 obli. 1. l.  
non figura. e. ti. Tu pondera quia de obli  
gatione ad antidora uide glo. in. cap. cum in  
offic. de testis 1 glo. in. c. 1 si q̄eade symo.

in vbo non petenti ecclesia etiam tenetur ad  
antidota fm glo. in. c. ecclesiasticis. xli. q. ii.  
vide glo. de mra in. l. ex hoc iure. ff. de iusti.  
et iure bar. in. l. si ex testō. §. i. ff. de fidelu.  
bar. vide in d. l. ex hoc iure in. vi. col. et vii.  
vide dominum abb. in. c. cu creatura de eccle  
bra. misaz vide abb. in. c. cum in ecclesiis et  
symo.

### Capitulum xlix.

Estat uidere quid de accidenti  
bus propter gloriam consequen  
dam in bello an tales obligent si  
bi illum in cuius subsidium vadit  
Solutio. si ob hoc solus accedant ut obligat  
Nam aut dominus teneretur mandati. aut  
negociorum gestorum. non mandati cum nul  
lum interuenerit mandatum ut supponitur i  
thematē questionis propositę nec actio mā  
dati oritur nisi intercedente mandato. Nam  
licet aliqui dicunt qd actio mandati oriatur  
ex dolo uel culpe interuenientibus iam sus  
cepto mandato tunc requiritur pcedētia  
mandati ut. l. i. ff. mandati. uel si dicas qd o  
ritur ex contractu pcedenti quod ē ueri?  
sicut alias dicimus in contractibus innomi  
natis ut. l. ex placito. C. de re permutata nō  
neg. gest. qd non accessit animo gerendi ne  
gocia illius ymmo propria. licet in uim conse  
quētie alterius negocia gerat et sic nec illa  
competet. Pondera qd isto casu non cō  
petit actio neg. gestorū. ut hic predicat p  
anis meus. qd magis hoc factū per petratum  
est propter suam gloriam qd nomine alicuius  
or. glo. l. si finita. §. suam ruerūt. ff. de damp.  
insec. idem si gessisset aliquid ex necessitate  
qd non competeret actio negociorum gesto  
rum ut concludit bar. in. l. cotem. §. si in fi.  
ff. de publica. et bar. in. l. dampni in. §. ii. ff. de  
damp. insec. vide glo. in. l. supra iter. §. cassi?  
ff. de aqua plu. arcanda.

### Capitulum l.

Estat uidere de his qui locant  
opera uel uerius assumuntur p e  
lectionem constituto solarario an  
tales agant contra conductores  
Solutio tales locant opera et rem. et ideo si  
conductores utatur solum ad id ad quod con  
ducantur nō tenentur ut. l. si quis domū. ff. lo  
ca. et conduc. et hoc nisi speciale pactum iter  
neniat ul' consuetudo aliud inducat ut est in  
ptalis scilicet qd prestantur emendo equorum  
peditorum in seruicio conducētis al' stat re  
gula ut. §. deductum est. Pondera qd hoc  
narratum est. §. in ca. xliiii. et nullus ē diffi  
cultatis. et ego teneo idem qd proauus meus  
sequēti ca. per aug. in dispu. ex orta guerra.  
Et an si stipendarius si amisit arma ul' equos  
an preciam reputat a conducente uide bar.

in. l. i. C. de re mili. bal. in. l. si de cōdi. isertis

### Capitulum li.

Estat etiam uidere de his qui ac  
cedunt animo robandi. Et de  
his non est dubium qd talibus si  
competit actio cum super turpi  
nulla inducatur obligatio. ff. de uerbo. obli.  
l. ueluti et l. generaliter et l. si ex plagia.

### Capitulum lii.

Iterius uidendum est quid de  
clericis an. s. possint ad bella ac  
cedere hanc questionem deter  
minauit gracianus. xxiii. q. iii.  
Conuenior ut glo. ibi recitat in sumis et de hoc  
per hosti. de resti. spolia. c. olim. fuerunt  
opinionēs uarię. Nam aliqui dicunt qd cleri  
ci ut possunt armis defensionis non autē im  
pugnationis et sic bellare ppter defensā. Alii  
qd omnibus armis dūmodo impugnent in con  
tinenti et p seipsis tantum defendendis non  
pro aliis et p se in necessitate uitabili positio  
de homi. c. ii. xxiii. q. viii. Conuenior et eadē  
cā et questione. i. in prin. Sin autem alio eua  
dere possunt tunc nō possunt ut. c. suscepim?  
de homicidio. Alii dicunt qd auctoritate  
pape possunt alio non gaudulus tenet qd per  
sonaliter bellare non possunt p alios possunt  
Idem uidetur sentire gracianus. xxiii. q. i.  
§. in registro. Concludendo in hoc pūcto  
clerici uocati a papa qd possunt accedere nā  
peneas principem est auct. bellandi. xxiii. q. i.  
quis culpatur. c. cā. q. ii. c. i. et q. iii. c. maxi  
mianus. In bello autem non est licitū pa  
ganum accedere ppter mecum irregularitatē  
possunt tamen alios confortare ad bellum ut  
pugnent ymmo et lapides et alia prohibere dū  
modo ex eorum scitibus non occidantur. Ista  
nō. Innoc. de resti. spoli. olim et c. sentētias  
ne clerici nel mo. uocati ab aliis maxime pi  
cipibus secularibus bellare non debent p de  
fensa autem ppla ubi alr euadere non possunt  
licitum est etiam occidere sine metu irregu  
laritatis ut in cle. si furiosus de homi. et bene  
dico defensa proprie psonę secus si defendat  
aliū etiam incontinenti ut patrem uel frēz  
uel similes psonas. Nec huic obstat quod nō.  
Innoc. in. c. si vō a de sen. ex cōi. ubi tenet qd  
pcutiens clericum hoc casu non est ex cōicatus  
Nam irregulariter contrahitur etiam sine cl  
pa ut in iudice iuste occidente. l. i. d. c. i. Et  
nō. in can. opa. de spon. Ex cōicatio autē nō  
trahitur sine culpa ymmo oportet qd pcedat  
dyabolica pñasio. xvii. q. iii. si quis suadēce  
ita nō. glo. in. dicta cle. si furiosus. An autēz  
imputari possit clerico qui non fugit sed ex  
pectat Inuasorem et ipium se defendendo in  
terfecit uidet qd imputari debeat per textus  
Illius clem. dum dicit qui mortem aliter uita



re non poterat pbatur p.l. sciētias. §. qui cū alr. ff. ad. l. aquil. unde sumpta est dicta cle. 7 hoc ad exemplū saluatoris qui fugit in egip- tum. xliii. q. iiii. §. i. 7 hoc nō bernardus in .c. suscepim de homici. Contrariū credo p.l. in eadem .ff. ex qui. ca. m. Nam ibi equi parantur hec duo non posse recedere 7 sine dedecore nō posse recedere fortius mouet qā In fuga possit occurrere periculi utpote si ca- deret qd frequenter occurrit in fuga unde non debet le tali piculo exponere ut lit. non contes. accedens le. ii. In hoc tñ credo pōde- randas singulas circumstantias. utputa peri- culum fuge. qualitatem persone fugientis 7 inuadentis ut il propter fugam uersimiliter meritis periculum incideret. tunc non sit i- putandum alias sic. Ante omnia pondera- que dixit sanctus thomas secunda secunde. q. xl. articulo. ii. ubi ad clericos pertinet dis- ponere 7 inducere alias ad bella iusta uide do- minum abbatem in. ca. peticio de iure iuran. cleric? phibet pugnare cū fidelib? qd hēant agere clerici quando bellum est iustum debet ostare alios ut pugnent sed ipsi non debent pugnare ut ibi per abbatem. 7 per dominum abb. in. c. q. in dubiis de pen. de materia uide d. abt. in. c. clerici de uita 7 bo. cleroz uide ca. quia. l. distinc. Possunt enim clerici mo- uere bellum ad eorum defensionem. possunt i- teresse bellū sed non possunt propriis manib? pugnare sed bene clamare exhortari &c. Sed caneant ne dicant occidite per ea que habē- tur in ca. significasti el. secundo de homici. 7 in ca. ex lris de exce. prela. uide glo. in ca. sciētias vii. q. i. 7 quod legitur in ca. ex multa de ioto 7 quod uoluit dominus abb. in ca. sicut 7 infra de iure iurando. v. col. Uide doc. in ca. cum olim de resti. spoli.

### Caplm liii.

Uid si stipendarii sunt assumpti de Almania per ciuitatem ita- licam uel dominum constituto salario habentes firmas certi tē- poris. Interim dum sunt in itinere ueniendi ciuitas occupatur per tyrannum uel domin? perdit statum suum nunquid agent stipenda- riū ad salarium uel pro rata uel ad quid. Et uidetur qd ad totum. nam uidetur tex. p hoc primo. C. de anno. per to. col. l. prima. C. de agen. in rebns. l. matriculam. §. de prepo. sacrozum scrine. l. si quis in sacris. C. de pri- ue. l. i. ff. de le. l. legatum. ff. de uer. 7 extra- or. co. l. i. §. scimna. In contrarium uiden- tur tex. C. de cro. mili. ano. l. in scolariibus 7 l. pe. in si. 7 l. post duos. C. de aduo. diuer. off. Solutio hic debetur pecunia ex con- tractu puro. ymmo debetur ex dispositione l. quia sunt electi ad officium 7 ex dispositio- ne. l. municipalis datur salarium ergo non ē mere contractus locati 7 cōducti. Et i tali

bas est aduertendum qd aliquando aliqui eli- guntur ad officium quod requirit laborem ubi datur salarium p labore principaliter ut sunt stipendiarii Aliquando eligunt ad of- ficiū ubi datur salarium non solum p labo- re sed quia attenditur pbitas intellectus 7 sciētie ut in potestatibus 7 similibus. Quq; eliguntur ad officium 7 datur salarium pro utroq; .i. labore 7 pbitate intellectus 7 sciē- tie ut in legatis. Primo casu datur p rata temporis quo seruiunt ut. l. pe. C. de iero. mi- li. anno. Et no. que dicit. j. si. capli cū sy. Secundo casu si una pstatio tantū erat tūc totum datur ut in leg. alr. atis in contrarium

Sinautem non erat una prestatio hinc debet p anno quo incepit officium ut. l. post duos. C. de offi. aduo. dñi iudi. Tertō casu ali- quando datur in remunerationem laboris 7 prudentie 7 tunc aut est diuisibile ut in ad- uocatis doctoribus 7 legatis 7 tunc dat totū ut supra habita distinc. an sit una pstatio uel plures ut. §. Aliquando est diuisibile ut in cō- testabili banderie nam. l. utq; eligitur. §. in- dustria 7 labor 7 recipiunt diuisionem tunc ut stipendiarii recipient p rata ut in industriosi 7 racione industrie electi habet totum distig- uendo ut. §. Est dare quantum calum ubi quis eligitur ad dignitatem principaliter ut domesticus principis tunc habet totum ut. l. si quis in sacris. C. de ppo sacroz. scrine. 7 l. matriculam. C. de agen. in rebns 7 l. i. de puile. 7 translat salarium ad heredes ut. C. de domest. 7 plet. l. si. li. xli. Per hec solui- qd de comite de lando assumpto capitaneo la- triculor societatis pluries assumpto p dnōs Italicos ad stipendium facta firma certi tē- poris 7 constituto salario. Pondera qd bar. in. l. i. §. diuus. ff. de uariis 7 extraordi. cog- ni. iiii. 7 iiii. col. lequitur opi. proau mei. Et forte non esset. nalam dicere qd in quacuncq; locante operas si per eum non stat quomin? seruiat sed stat per conductorem uel per ca- sum fortuitum debet locator semper habere integrum salarium. l. qui operas. l. sed 7 ade- des. §. penul. ff. loca. unde potestas qui non sua culpa sed culpa ciuim non potuit exer- cere officium nibilominus debet habere inte- grum salarium sed bal. in ca. de feudo guar- die. uide bar. in. l. i. §. diuus ff. de natiis 7 ex- traor. cogni. quando loquitur de aduocato qui desit causam culpa clientis uō aut sua.

### Caplm liiii.

Iterius queritur quando deat solui stipendiariis an in principio cuiuslibet mensis. an in fine glo. aliquando uidentur dicere i ad- uocato qui etiam militat ut. l. aduocati. C. de aduoca. diuerso. iudi. quod debeatur a pri- cipio hoc tenet in. l. i. §. diuus. ff. de uariis 7 extraor. cogni. Item sentit in. l. pperādū

§. in bonoariiis. C. de iudi. l. qui opas. §. i. ff. loca. 7 conduc. Contrarium tenet in. l. i. C. de pmipt. li. xii. Soso aliquando dat pecunia magis p sumptibus q p mercede laboris 7 tunc debet in prin. tolle exemplum in legatis pbatut hoc. ff. de legi. l. legat. ff. m. d. l. si vo non re. §. si mandata. C. de leg. l. ii. li. x. Aliquando debet pecunia p mercede laboris 7 tunc debet pderari qd acti sit expresse uel tacite. Nam si tacite actus sit tunc uidetur q in principio. Ecce talis e qui non potest exhibere operas promissas nisi sibi detur pecunia. tunc uidetur actum tacite q debeatur in principio tunc enim semp inspiciamus quod uerisimilibus est. ff. de reg. iuris. l. semper in stipulationibus. Sin autem non apparet ista similitudo. tunc in obligat. que descendit ex contractu salariuz debetur in fine temporum ut no. in. l. eden. C. loca. 7 conduc. 7 no. ff. de sti. seruo. l. seruo. l. seruo. comu nis merui. §. finali. Sin autem debeatur ex dispositione legis electis ad officia de quibus supra in proposito tunc si est unum tantum salarium inicio debet prestari. l. i. §. diuus. ff. de uariis 7 extraz. cog. 7 sic intelligitur glo. hec sentientes. Aut est annui mensuum ut in stipendariis de quibus loquimur qui hnt vii. flo. i. mense proposta. 7 tunc debet in prin. ut. l. post duos. C. de aduoca. diuerso. lu. 7 lege prima C. de pmipt. li. xii. Puto tamen q stipendarii non habeant nisi pro rata temporis effectualiter quo seruiunt ut supra dictus est 7 residuum teneantur restituere. ubi etiam propter causam intrinsecam i surgat impedimentum. Pondera q dixit bar. in lege per hanc. C. de aduoca. diuersorum iudicioznm 7 ibi bal. etiam q in medio anni debet solui salarium uide glo. i. c. u e detes l. q. iii. ubi uidet q salaria doctoribus in prin. anni solui debeantur. 7c. uide bal. in. l. ii. C. locati uide bar. in. l. qui infulam. §. qui eden. ff. locat. uide bar. in. l. i. §. diuus d' uas. 7 c. x. ordi. cog. in vi. col.

An stipendarii se absentantes tempore aliquo etiam de licentia domini perdant stipendium pro tempore illo.

#### Ca. lv.

Uid si stipendarii pendente tpe stipendii recedant aliquo tempore Nunquid p illo tempore perdet stipendium 7 pone q cum licentia domini. Soso hic aduertendum q ope aliquando limitantur respectu temporis non certi facti tolle in aduocatis ecclesie qui habent tantum salarium p qualibet causa q occurrerit ecclesie illo ano tunc non est dubium q est una obligatio ppter unum factum ad qd inducitur licet pstationes possent esse plures idcirco totum debetur ut in pass. l. i. §.

diuus. ff. de uas. 7 c. x. cogni. Aliquando ope sunt limitate respectu certi facti 7 certi temporis ut in doctore assumpto ad legem du libz tpe certo 7 tunc aut pmitit totum salarium simul sed sit distributio soluc. p partes temporum 7 tunc etiam una obligatio est ut o. l. lecta. ff. si cer. pe. Aliquando fit annua uel menstrua 7 tunc sunt tot obligatōes quot sunt menses ut. l. post duos 7 tunc non habz pro toto tempore pmo singulis mensibus qd seruit cedunt dies obligationum singularum.

Pondera quia idem uidetur tenere bar. in. l. i. §. diuus. ff. de uariis 7 extraz. cog. posset tamen allegari glo. in. l. doctores. §. si ad die. ff. de iure filii. q stipendarius q recessit p aliquod tempus cum licentia conductoris dz habere interim salarium. 7c. a maiori posset allari q dixit bal. in. l. si. C. d' pdi. infertis i fi.

#### Capitulum lvi.

Uid si culpa sua nolunt seruire toto tempore An pdant salarii totius temporis sic q nihil habeant pro tempore quo seruierunt

An solum pdere debeant p tempore quo non seruierunt. Soso quedaz sunt officia ad que quis eligitur que sunt indiduas pro aliquo obmisso residuum releuat tolle exemplum in potestate in stipendario tunc non redit totum sed solum pro tempore futuro teneat tñ p tuto tpe ad licee ut si nihil testit nihil soluat ff. loca. 7 col. si fid' v. filis 7 no in. l. meua ff. de an. lega. De hoc pondera in simili quod dixit bal. in. l. ii. C. locati. 7 bal. in. l. eden. et. ti. in. l. iii. col. uide bartolum in. l. si fundus. ff. locati. uide bartolum in lege prima. §. diuus i fine. ff. de uariis 7 extraz. cog. nif.

#### Capitulum lvii.

Uid si uolit seruire per substitutum apparet q non possit qz de cto est industria persone ut. l. inter artifices. ff. de solu. Et. l. une

C. de cadu. tollen. 7 caultimo de offi. dele. 7 capitulo is cus ex. l. vi. In contrarium uidetur qz potest quis per alium quod per se ut regula potest quis cum sy. Solutio debet ponderari modus a sumptionis. Nam aliquando dominus uel ciuitas assumit conuestabilem cui dat baneriam 7 stipendium 7 conuestabilis debet sibi eligere sub baneria quos uoluerit tunc non currit questio inter ciuitatem 7 stipendarios qz ciuitas nihil eligit nisi industriam 7 laborem 7 conuestabilis ipse tamen tenetur. Aliquando ciuitas eligit sibi stipendarios quos reponit sub singulis banis 7 tunc in conuestabili eligitur industria 7 opera 7 ex capite industrie non possz dare substitutum ut iuribus statim allegatio In stipendariis tamen eligitur opera 7



labor. tunc in his quorum opera labor et etiam industria eligitur potest quis dare substitutum ut no. in no. in ca. cum bertoldus de re iudi. hosti. ibi contra. Credo opi. in no. ueritatem ponderatis iuribus statim allegatio et eorum mente. Lucius tamen est quod fiat cum consensu domini ut seruetur utriusque opinio. In hac materia pondera quod dixit bar. in l. i. §. diuus de uariis et extraor. cogit si est electus industria persona non potest seruire per substitutum si impeditur propter dignitatem suam peruenientem potest seruire per substitutum Si enim non tenetur dare substitutum regulariter de doctore an possit per substitutum legere. uide bar. in l. inter artifices. ff. de sol. et abb. in ca. i. de summa. tri. i. iii. col. de assalio. uide glo. in l. quisquis. C. de epi. de de. glo. in ca. latorem xxiii. q. ii. Et an quis ualeat seruire per substitutum uide glo. in l. natus. C. de curio li. x. glo. et bar. in l. continens. §. si ab eo. ff. de uer. obli. in l. i. in metalum. ff. de penis. bar. in l. neminem de cu. ll. x. uide bal. in l. ad similitudinem. ff. de epi. et de. uide bal. in l. i. §. ne autem. C. de ca. di. tollen. uide §. qui ait. in autem de sanct. episcopis et in §. ascriptio. Et pondera quod quando quis potest seruire per substitutum substitutus debet esse eque idoneus ut scriptor qui promittit scribere librum non potest scribere discipulum sed glo. in l. stipulationes commodissimum. ff. de uer. obli. Et idem uoluit glo. in l. C. de manci. et colo. primo. li. x. Et uide ibi quod sapienter dixit bar. uide io. an. in re. qui facit de re. in l. i. vi. i. merca.

#### Capitulum lviij.

Quid si stipendium infirmus. So. fuire uidetur ut habet debeat salarium ut l. si beatus. §. Stichus. ff. de statu laboris. Pondera quod dixit glo. in l. arbitrio. §. de illo. ff. de usufructu. uide bar. in l. si uno. §. cum quidam in usufructu. uide de bar. in l. opere. ff. de usufructu. le. bal. in l. cum quidam. C. de condi. insertis in fl. uide dñs abb. in c. i. de de clerici. egrotante.

#### Capitulum lviii.

Quinto uidendum restat de spoliis et captiuis que in bello sunt Et primo an in bello aliquid capiens efficiatur dominus per hoc capte et rei. Et an sit locus postliminio. Solatio in bello publico auctoritate principis in dicto de quo supra dictum est hec omnia procedunt nam capiens efficit ut dominus capti efficiantur serui ut l. hostes. ff. de captiuis et l. hostes de uerbo. signi. Sin autem bellum non sit ex edicto principis. licet alias iustitiam ut cum sit pax defenso rerum suarum tunc si ille qui bellum indicit habet iurisdictionem

super eo pro quo bellum indicit potest statuere quod quilibet capiens aliquid in bello illo efficitur rerum captarum et personarum retentor donec presentet superiori ita tenet in no. in c. de iure iuran. remittens super hoc ad no. in ca. a nobis de sententia. exco. Subdit in no. quod si non fecerit aliquam constitutionem poterit illum condempnare de inuasioe facta infra fines sue iurisdictionis ut i. au. q. in p. i. C. ubi de crimi. agi. optz. subdit quod si bellum indicens nullam habet iurisdictionem sed solum defendet se et bona sua tunc non licet sibi inuasorem suum capere et captum detinere quia solum licet sibi se defendere cum moderamine inculpate tutele. C. unde vi. l. i. de resti. spoli. olim. Subditque si inuadit res inuasoris sui quod inuasori non competit vi. bo. rapt. nec iniuriarum quia obstat exceptio partis criminis hec omnia ut dixi non. in no. in c. sicut de iure iuran. Primum dictum in no. puto quod in indistincte quia dominus propter delictum per constitutionem suam potest quod priuare dominio sue rei et in alium transferre Secundum autem dictum non credo verum in distincte immo credo quod si ciuitas recognoscens suptorem de facto inducat bellum. Alii etiam non recognoscunt et sic quibus sit hostis populi romani quod sine aliqua constitutoe ueniat locum quod in bello indicto ex edicto pretoris. Nam hoc puenit ex iure gentium antiquis moribus introducto scilicet quod de personis quia modernis temporibus non procedit quod capti in bellis efficiantur serui nec uenduntur nec in talibus hodie locus est postliminio. Tertium dictum legendo illam decretalem aliqui reprobaui per rationem illam. Nam spoliatus ante omnia est restituendus nec opponi potest exceptio temporum ut in c. in lris et c. Item cum quis de resti. spoli. Non excipiet prius spoliatus de crimine nec de alio et maiori. Nunc scribendo credo saluari posse saluari posse glo. in no. duobus modis. Primo quia non loquitur in no. in casu in quo spoliatus ultimus intentet interdictum et si vi. immo loquitur in casu in quo intentat vi. bo. rapt. uel iniuriarum que ut clare uisum esse sunt uel dic quod in no. non intelligitur quod opponatur exceptio criminis in modum criminis sed in modum alterius spoliationis de quo excipi potest contra agentem etiam in terdicto recuperande ut repellatur exceptioe spoliationis ut probat tex. in c. sup. spoliatoe de ordi. co. Pondera quod dixit bar. in l. hostes ff. de captiuis et postli. reuerf. uide bar. in l. diuus. ff. de iure fisci. Et bar. in l. qui a latronibus. ff. de testis. Et abb. in c. i. de con. uersione infidelium uide glo. in c. ius militum l. di. uide bar. in l. nalem. §. si. ff. de acquis. rez. do. bar. plene in l. si quid in bello. ff. de captis uide quod dixit io. an. in rubrica de rapt. bal. in l. nam et uiuus. ff. de negot. gest. bal. in c. i. de milite usulio qui contra. est et bal. in

Lab hostibus la. li. 7 in. l. cas non. C. de capti-  
uis p ange. in dispu. renouata guerra p inno.  
in. c. olim. e. li. de resti. spoli. p abb. in. c. sicut  
7. j. in. l. i. col. de iure iuran. vide ange. in. §  
Ius autem gentiū iusti. de iure n. li. in. l. i. col.  
7 ange. in. §. ab hostibus insti. quibus modis  
ius patrie po. soluitur 7 pondera an in foro p  
scientie liceat capta in bello retinere. Vide  
bal. in. ca. i. de milite usal. qui contu. est. Et  
an hec habeant locum in bello ciuili. bal. in. l.  
i. in prin. de cadu. tollen.

### Capitulum lx.

Uterius quero an istis bellis q  
facit una ciuitas contra alia pos-  
sint dici hostes 7 serui efficien-  
tur capti 7 dominiuz eoruz que-  
ratur. apparet q non. l. si quis in genuum in  
fi. ff. de cap. In contrarium uidetur. nam  
quelibet ciuitas per se facit populum 7 sic ui-  
detur q sint hostes sicut populus xpianus 7  
sarracenus. Sol. quando est contentio inter  
duas ciuitates que sunt sub eodem domino n  
est locus captiuitati 7 postliminio ut. l. si q  
in genuum. ff. de capt. Sed quando est con-  
tentio inter duas ciuitates que non recog-  
noscunt superiorem 7 pono ut tollatur. ome  
dubium q quelibet sit hostis imperii qz rebel-  
les tunc iure gentium antiquis moribus ito  
ducto est locus captiuitati 7 iure postlimi-  
ni. Sed secundum mores ipsorum 7 consue-  
tudinis antiquitus obseruatus intra xpianos  
quantum ad personas non sequatur postlimi-  
nium nec uenduntur persone nec serui effici-  
untur. Pondera q bar. in. l. hostes. ff. de  
captiuis in. sine sentit id quod proauus meus  
hic bar. in. l. nullus. C. de indeis rē.

### Capitulum lxi.

Ed an capta in bello efficiantur  
captiuium uidetur q sic per. l.  
si quid in bello. ff. de cap. Cō-  
trarius uidetur probare. l. si cap-  
tius. ff. e. titulo Solutio. l. si quid in bello  
loquitur in rebus mobilibus. Sed oppo-  
q mobilia publicentur ut. c. dicat xxxiii. q.  
i. So. dico q efficiantur captiui. sed te-  
netur ea assignare duci belli qui distribuit le-  
cundum merita. Et hoc procedunt in his in  
quibus nō uendicat sibi locum postliminium  
l. ii. ff. de captiuis. Pondera que allegam  
supra ad hoc propositum in ca. lvi. post pro-  
prium meum preclarum uirum.

### Capitulum lxii.

Uterius queritur an in bellis sit  
licitum insidias uti ad uictorias  
consequendam uidetur q sic.  
Nam inquit ang. in li. questionis

in bellum iustum incipitur utrum i pte pug-  
net quis an ex insidiis nihil ad iusticiam in-  
terit hoc probatur per id quod habetur io-  
sue viii. ca. In contrarium uidetur. nam  
scribitur deuter. xvi. ca. quod iustum est in-  
ste exequeris. sed p insidias est iuste exequi  
cū sapiat dolus taliter agitata p act. d. dolo  
rescidit. ff. 7. c. d. dolo p totū. pterea insidie  
ipugnat felicitati 7 rumpunt fidē q fuanda  
est hosti. 7 ang. ad hostiū iur. trāsumptis in  
can. xxiii. q. i. noli. xxlii. q. v. qz dō patri.  
Preterea scribitur Mathi. vii. c. Que uul-  
tis ut faciant uobis homines uos eisdem faci-  
te ut in prin. decretorum 7 hoc obseruandum  
ad omnes pimos. Cum igitur nullus uellet  
insidias sibi fieri ergo nec aliis facere debeat  
Solo hic atredendum est q ppter insidie  
dicantur que tendunt et fallendum aliquoz  
Sed duplx contingit aliqz falli vbo 7 fac-  
to alterius vno modo dicatur fallum ut deci-  
piatur uel aliquid pmissum non atredatur.  
Et tunc sic utendo insidiis semp est illicituz.  
Nam inter hostes sunt quedam federa que fu-  
uanda sunt ut inquit Ambrosius in li. d. offi.  
Alio modo potest falli dicto uel facto ut quia  
non aperimus sibi ppositum nostrum nec le-  
creta nostra 7 hoc modo licet fallere. Nam  
nec semper sacre scripture sunt pandēda ne  
irrideantur iuxta illud Mathi. x. c. Nolite  
semen dare canibus. x. li. Est precipuum mā-  
datum intra militaria documenta ut secreta  
non reuelentur hostibus. Et sic etiam decla-  
rat beatus Thomas fa. fe. q. xl. 7 glo. xxiii. q.  
ii. dominus dicit indistincte uti posse dum-  
modo non rumpamus fidem ut. c. noli eadem  
cā 7. q. i. hoc idem tenet glo. in. c. utile. xxii.  
q. ii. aliat calum in mandatis. xliii. di. ff. de  
cap. l. nihil. l. i. interest. C. de pñ. l. ii. xliii. q.  
viii. dixit de conse. di. ii. dixit dominus. Pon-  
dera qd dixit glo. in. l. i. in verbo hostem. ff.  
de dolo 7 uic. ibi bartolum.

### Capitulum lxiii.

Consequenter uidendum est An  
in festis licitum sit bellare 7 ui-  
detur q non quia festa sunt in-  
ducta ut qz uacet diuinis d. cō.  
di. iii. pñciandum de fer. c. ultimo. C. eo.  
ti. l. dies 7. l. i. 7 pbat exēplo. xx. c. Pre-  
terea ysa. lvi. c. reprehenduntur qui in die-  
bus ieiunij reptunt debita 7 cōmittūt lites  
pugno percutientes multo magis igitur in festis  
bellantes reprehendendi sunt. Preterea ni-  
hil iordinate agendum est ad uitandum intē-  
pabile incōmodum ergo. Preterea uidet-  
ur. in caplo primo de treuga 7 pace. In  
contrarius uidet. Nam legitur primo macha-  
beorum. c. ii. Cogitauerunt laudabiliter dicē-  
tes. Omnis homo qui uēit ad nos in die belli  
in die laborum pugnemus aduersus eum.  
Solo beatus Thomas scōa scōe. q. xl. t3



q̄ in festis bellari potest necessitate urgente ipsa autē cessante cessandum est q̄ probat p̄ id quod habet Jo. vii. c. Nōbī indignamini qui totum hominem sanant in sabbato. Et sic infert medicos medicari posse in festo p̄pter salutem priuatam hominis multamagis autē procuranda est salubritas publica. gloss. 1. ho. in. c. l. de treuga 1. pace. Dicunt q̄ die Jouis non est bellandum quia dominus illa die ascendit ad celos 1. cenam fecit cum discipulis de cōse. di. l. 1. 1. consē. di. iii. l. ita. die Veneris non p̄pter reuerentiam passionis domini die Sabbati non q̄a ea die discipuli latitauerunt propter metum iudeorum 1. quia corpus dñi latuit in sepulchro de consē. di. iii. sabbato. die Dominico non quia fere omnes insigne fecit dominus illa die lxxv. di. quo die 1. p̄pter reuerentiam resurrectionis. Credo ponderandum necessitatem urgentem ut supra tactum est tex. nicolai pape est in. c. si nulla xxiii. q. viii. Pondera quia dominus abbas moderni hoc examinant in capitulo primo treuga 1. pace.

### Capitulum lxxiii.

Consequenter queritur quid si aliquis in bello totum saum iter esse dicit consecutus. an iterū possit in iudicio convenire suū ad, mercurium vel adhuc possit bellum indicare contra eum. videtur q̄ iterum possit convenire. Nam captum in bello est pena cōtumacie ergo nihilominus agere potest. ff. de ta. ex. bi. l. locum. §. p̄. Item res non est soluta pro debito p̄mno in bello questum dominus xxiii. q. v. dicat. 1. q. vii. si de rebus. ff. de acq. ren. re. do. l. naturaliter. Item q̄ contra contumacem in infinitum iurari potest. ff. de rei ven. l. qui restituere glo. in ca. dominus. xxi. l. q. ii. tenet contrarium per regulam bonae fidei. ff. de regulis iur. Ego non credo q̄ glo. vera sit indistincte p̄mno distinguī debet ab eodem an ab aliis. Si ab eodem procedat opinio Jo. Si ab aliis aut habetibus cāz ab eo 1. tunc idem ut. C. de evict. l. emptori alias haberet regressum contra primum ut. C. de usuris rei iudi. l. ii. §. finali alias autem ē licitum pluries idem solui. ut. l. iii. §. con. dempnate. ff. de tu. ex. bi. 1. iusti. de. §. si res Sic no. in regula bonae fidei de reg. iur. Et ita etiam no. Jo. fauē in dicto. c. dominus.

### Capitulum lxxv.

Non morientes in bello solentur So. morientes in bello ecclesie pro ipsius defensione consequuntur celeste regnum. Hoc probat duo textus specialiter ca. olim xxiii. q. viii. 1. fuit leonis pape directum ad regem francorum 1. ca. omnium xxiii. q. v. 1. fuit nicolai directum exercitui francorum decedentes

autem in aliis bellis alias iustis etiam saluantur dummodo sine mortali decedant peccato de pen. di. v. fratres.

### Capitulum lxxvi.

Non licet bello corporali defendere possessiones ecclesie 1. super hoc conuocare milites planum est q̄ sic probant tex. xxiii. q. iii. c. maximus xv. q. vi. aut vs adrianus. xxiii. q. viii. c. igitur 1. c. cotatu 1. glo. magni casti auctoritate. q. vi. pbat tex. in. c. dilecto. de len. ex. cōl. li. xv.

### Capitulum lxxvii.

Non licet episcopis ad bellū accedere sine licentia pape. Dicunt quidam q̄ nō indistincte p̄ casu qui videntur expresse hoc dicere xxiii. q. viii. q̄ ausi 1. c. si nobis 1. c. si quis episcopus licet illa capitula habeant narios inter lectos tamen hoc credo utq̄ si uocentur vel sponte ad bella aliena maxima secularia accedant secus si defendant iura sua

### Capitulum lxxviii.

Non prelati p̄ temporalibus que tenent ab imperatore teneantur solvere tributū p̄ bellis ab eo indicatis. Et dicendum q̄ sic ut pbat xxiii. q. viii. c. i. §. ecce cum duobus capitulis sequentibus usq̄ ad. §. gūla. Pondera q̄ habet in. c. si tributū 1. in. c. magnū. xl. q. i.

### Capitulum lxxix.

Non captis in bello iusto sit misericordendum Dicendum q̄ sic nisi pariendo timeatur perturbatio pacis probatur in. c. noli. xxiii. q. iii. in fl. 1. per illud. c. expositi ut intelligebat bug. fuit amputatum caput Conradino.

### Capitulum lxxx.

Non ecclesia debet indicare bellū iudeis. Dicendum q̄ non cum ubi p̄parati sunt seruire nec p̄quantur xpianos. Secus de la racenis qui prosequitur xpianos. hic ē tex. xxiii. q. viii. dispar 1. ibi ne. glo. q̄ nec etiam saracenis iocent indicenda nisi xpianos p̄sequerentur.

### Capitulum lxxxi.

Non degentes in bello qui pugnare non possunt gaudeant inuicem bellantium 1. dic q̄ sic dummodo alias consilio sint utiles ut nō in

capitulo ex multis decto. Pondera quod dixit dominus abb. in dicto ca. ex multa. s. q. polleus consilio non dicitur inhabilis ad pugnandum. licet corpore pugnare non possit. unde ex solo consilio quis incurrit irregularitatem addito homicidio per cap. si quis viduam. l. di. et aliis viribus ibi per eum allegatis. Unde non viribus ac velocitatibus ac celeritate corporis res magne geruntur. sed consilio auctoritate et sententia quibus non orbari sed augeri senectus solet. ita preclare scriptabat flos eloquentie i libro de senectute

### Capitulum lxxii.

Si liceat prelati ratione temporalis iurisdictionis bella indicere et ad ea interesse et coartari ad prelium. dic q. sic ut notat Inno. in ca. quod in dubiis de penis. Pondera q. hosti. in dicto ca. q. in dubiis sequitur doctrinam Inno. dominus abb. ibi concludit q. si causa defensionis adest et non est necessitas in evitabilis. tunc si sequitur mors ex percussione sua efficitur irregularis. Secus si si ex percussione sua sed aliorum dixi. b. i. c. lli.

### Ca. lxxiii.

Si liceat prelato pro iniuria subditi sui de quo non sit iusticia bellum indicere et alios q. iniuriam in bello capere. Et dic q. sic ut no. Inno. in capitulo dilectus de appell. et capitulo sicut de iure iurando.

### Ca. lxxiiii.

Si delegatus pape possit bellum indicere hoc est an possit invocare brachium seculare. Questio est vulgata et tractatur in ca. significatione de offi. dele. per Inno. Pondera q. comuniter concluditur q. non pot. indicere bellum contra resistentes. q. hoc est solius principis xxiii. q. ii. ca. primo et in nequimovere de arma. sed d. recurrere ad brachium seculare

### Capitulum lxxv.

Si bella que indicit ecclesia contra excommunicatos sunt meritoria. Et dicendum est q. sic. Et in illa licitum est prelati et singulis hostari alios ad pugnandum probat tex. xxiii. q. v. ad omnem et ca. seq. et q. vii. c. igitur usq. ad. s. ecce. et q. llii. ca. sicut excellentis

### Capitulum lxxvi.

Dilequenter queritur quot sit genera bellorum corporaliu et q. b. repitur in iure expellum. Solo Sex requiritur in iure expella.

Primum romanorum appellatur q. fidelis contra infideles et hoc iustum est de her. excoicat. ii. Et dicitur romanum quia rome caput fidei xxiii. q. i. hec est fides et c. qm. s. summa trini. c. penult. Sic potest intelligi. l. hostes. ff. de capt. Secundum q. sit auctoritate iudicis legitimi habentis meriti Impius contra contumaces et rebelles ut. l. continet ff. quod me. ca. . iiii. et l. i. llii. de inf. o. iudi. C. ne q. in sua ca. l. una. Et hii p. p. n. d. n. r. hostes nam quod de suo ad nos puenit nostrum efficitur non autem econverso. Sic intelligi l. v. s. in pace. ff. de captivis. Tertium dicitur bellum presumptivum q. faciunt iudices inobedientes de pe. di. lli. s. i. ad si. d. ma. et obed. di. c. si quis venerit. ff. de rei ven. l. qui restituer. ff. ne vis fiat ei. l. llii. C. s. sedic. l. i. in si

Quartum dicitur bellum q. licitum est quantumcuq. iuris auctoritate concedat. Et est licitum quoad illum cui conceditur. xxiii. q. ii. dominus de sen. excoi. c. si non. i. s. nec ille. C. quando lice. cuiq. sine in. vin. l. i. et l. ii. et etiam p. xini et vicini ut defen. exco. di. lecro li. vi. Quintum illicitum quoad illos q. hoc faciunt contra auctoritate iudicis et iuris ut de senten. excoi. p. pendimus et c. con. tingit et c. audacia Sextum voluntarium quo utuntur principes q. non est licitum cu non nemini sine principis auctoritate licent arma portare. C. ne armorum usus in rubeo et nigro li. x. in aut. de ma. prin. collat. lli. in aut. de armis col. l. vi. ymmo contra sentientes incidunt in. l. i. il. m. i. et l. ut. ff. ad. l. i. m. i. et l. llii. Septimum dicitur necessarium et licitum quod faciunt si seles iuris auctoritate se defendendo contra ipsos invadentes. Nam vim ui repellere licet. ff. de iusti. et iure. l. uti vim cuq. sp. de his p. hosti. de homici. p. huana li. vi. p. archi. in. c. iustum. xxiii. q. ii. Ex his inferitur que bella sint illicita et que licita Nam licita dicuntur r. e. ius dicentis illius contra quam et ratione rei et cause et iure p. mittentis illicita econtra causa autem una generaliter iustificat. l. c. o. m. a. i. i. i. u. s. t. i. f. i. c. a. t. i. s. t. i. s. cu. eni. ab eo qui obnoxius est iusticia hii non pot. tunc l. bellum indicere na i subsidium recurrere ad illud suffragium xxiii. q. i. quid culpatur. et ca. noli xxiii. q. vii. si nulla. ff. de usufr. l. usufructus. Et de hoc q. scilicet sit licitum no. per Inno. de restit. spolia. ca. olim. Et p. hosti. in summa de trengs et pace. s. si quis iustum per beatum thomam fa. fe. xl. q. arti. p. mo i. et llii. p. egidii i li. de regie principi. in si.

### Capitulum lxxvii.

Ita supra tercio proximo principali tractatu de bello universalis corporali. Restat nunc quarto



uidere & bello particulari quod sit ob tutelam  
huius et ipsius tractatu sic procedam. Nam pri-  
mo demonstrabo quid sit. scilicet quot sunt spe-  
cies eius. tercio quo ordine inductum sit.  
quarto quibus liceat. quinto contra quos  
sexto pro quibus. septimo qualiter liceat. oc-  
tavo quis sit ipsius finis.

### Capitulum lxxviii.

Propter primum queritur quid sit  
bellum ob tutelam sui particulari  
inductum. dico quod est contentio  
ex orta propter disforme huma-  
no aspectui presentatum ex uolentia parti-  
cularium illatione proueniens ad ipsius ex-  
clusionem tendens. hec probantur mentali-  
ter per textum in l. ut uim. ff. de iusti. et iure. l. i.  
scientiam. §. qui cum aliter. ff. ad. l. agi. et l. i.  
l. c. unde ui. et l. iii. §. si quis. ff. de ui. et ui. ar-  
ma. et ca. olim de resti. spolia. Et dixi contē-  
tio. Nam contentio ponitur pro genere ut  
posita in diffinitione belli generaliter sum-  
pti ut supra primo tractatu in principio. scilicet  
dixi exorta propter disforme et illud po-  
nitur loco differētie. Nam per hoc differt a  
bello uniuersali et aliis speciebus belli. tercio  
dixi ad ipsius et hec est causa finalis ipsius belli.

### Capitulum lxxix.

Propter secundum queritur quot  
sunt ipsius species. dico quot sunt  
duo. Nam quoddam iustum quod-  
dam iniustum. sunt etiam diuisi  
bellum uniuersale. bellum autem particulare  
iustum est duplex. nam quoddam sit propter  
tutelam sui corporis uel ad berentium sune  
et tingentium uerum corpus. et de hoc in prese-  
ti tractatu discutiam. Aliud sit propter  
tutelam corporis militici uel partis ut dicimur  
in uniuersitate que appellantur membra et  
partes. ff. de uniuers. l. i. ff. ad municipali. qd  
maior. ff. de mune. et bono. l. sed si hoc. §. qui  
manumittitur de excess. poela. ba. cum dilec-  
tis et ibi no. Si ergo uniuersitas propter de-  
fensam cuius sui ab extraneo oppressi deficiente  
iusticia iudicia opprimentis bellum indicat.  
hoc appellatur particulare propter tutelam  
militici corporis prime partis et hec appellan-  
tur reprensalia. de qua in anc. ut rem pigno.  
per totum de in ius ca. uno li. vi. Et de hoc  
bello dicetur in tractatu proximo. Bellum  
autem iustum particulare ob tutelam ueri cor-  
poris in dictum est contentio exorta propter  
disforme humano appetitui presentatum prouci-  
ens ex illatione uolentia particularis a pri-  
uata uel publica persona extra officium ius-  
te offerente ad ipsius exclusionem tendens  
cum moderamine inculpate tutele et hec p-  
bantur in l. i. c. unde ui. cum ibi no. iustus  
autē ubi predicta uel aliqd predictorum deficit

ut in sequentibus declarabit. Pōdera ubum  
cum moderamine inculpate tutele. Et uide  
omnino bar. in l. ut uim. ff. de iusti. et iur. in  
fi. et bar. post glo. in l. i. c. vñd et in. iii. col.  
Et d. abb. post alios in. c. significasti de ho-  
mici. in. iii. col. et abb. in. c. suscepimus. eo-  
ri. in. ii. col. uide pauum meum in cle. i. de  
homicid. post geuge. abba. in. c. olim de resti.  
spoli. in. x. col. uide bar. in l. furē. ff. de sicca  
aug. in. §. ius autem gentium in. iii. col. de  
iure naturalis gen. et ciuili uide plene p. pau-  
um meum. j. in. c. quod incipit circa septimum  
principale et cum se. capli. ubi discurreit p  
omnes species moderaminis inculpate tutele  
et doc. tangunt in locis allatis.

### Capitulum lxxx.



Propter tertium queritur quo iure hoc  
proueniat et cōpetat glo. que est  
in l. ut uim. ff. de iusti. et iur. sup  
vdo iur. dicit iureiuri nō iure celi  
Si gl. intelligit quod iure fori pueniat hoc cre-  
do quod glo. non dicat uerum. Sin autem glo.  
intelligat quod iur. fori iudici possit impuni tūc  
credo quod glo. dicat uer. In eo autem quod glo.  
dicat non iure celi credo quod glo. dicat falluz  
Redeo ad singula et dico quod bellum ob tutelam  
sui puenit a iure naturali non autem a iure  
positiuo ciuili uel canonico quod hoc sit uerum  
probatur sic. Nam natura pductionem cuiuscū-  
que tendit in ipsius conseruationem donec se  
extendant uires agentis naturalis et nicitur  
in expulsiōem cuiuscūque contrarii. Et si se-  
cus contingat hoc contingit ppter defectus  
uiriū agentis et sup habundantiam agētū  
In contrariam ut quāq. hoc contingit ex in-  
tentione agentis naturalis. pducti et conser-  
uatiui ymmo contra intentionem cum semp  
contrariis resistit quantum potest hoc patet  
ex sensentis inducendo p singula elemēta-  
ria. Nam in elementariis que agunt et patiū-  
tur ad inuicem hoc patet. Nam passim resistit  
agenti et reagit in ipsum solum ad finem con-  
seruationis sui esse destructionem agentis in  
contrarium et agens corpale. Materiale  
sup agendo repatiē ut inquit phis secundo  
de generatioe et. ii. phisicorum hoc patet in  
istis inanimatis hoc in plantis. Nam primata  
iplarum natura in conseruatione iplarum et  
uitam et contrariorum expulsiōem hec in  
brutis. Et quare non sit in rationabili crea-  
tura hoc contingat ymmo fortius cum ipsa  
ceteris sit nobilior et ad ipsam ut ad finē oia  
ordinantur ut. l. in pecudum. ff. de usuris.  
Progenit ergo defensa ex instinctu tali  
hoc pbat text. in clemē. pastoralis. §. ceterū  
de re iudi. ubi dicit text. defensionis que a iu-  
re puenit naturali hoc sentire uidetur glo.  
que est in l. scientiam. §. cū alr. ff. ad. l. agi.  
Ita dicit text. aduersus piculum nālis rō defen-  
dere permittit. Concludo ergo ex hoc

passu quod hoc bellum restringendo ad inductum ob tutelam corporis superuenit ex iure naturali et ipsius instinctu. Sed ius appositum approbat vel non prohibet ut dicit glo. in l. scientiam. §. qui cum aliter. Nam aliqua provincia ex instinctu natura iure positiva puniunt ut patet in carnali copula. non simpliciter coitus puenit ex naturali i. dāp nat lex et in hoc ius positum limitat et qualificat actus provenientes a iure naturali sic in singulis actibus natura provenientibus. Nam naturaliter quis appetit cibum potus et tamen lex canonica limitat. Nam quodam cibis certis temporibus inibet. verum est quod lex positiva etiam qualificat modum et sensu ut patet in l. i. C. unde ui. et patebit per infra notanda. Concluditur igitur hoc puenire a iure naturali sed approbato a iure positivo tam civili quam canonico et etiam qualificatum et modificatum eisdem. Et hoc forte saluari potest glo. que est in l. ut uim. et sic intelligatur. Sed dicebat glo. non iure celi uidetur sentire quod de iure diuino non permittatur uim ui repellere. Per hanc op. glo. uidentur uidentur fuisse rex luce vi. Si percussit in unam maxillam prebere ei et alibi xxiii. q. i. in principio. Scribitur etiam si quis augurauerit te mille. mille passus uade cum eo mille passus Jo. vi. et mathei vi. Scribitur etiam ad roma xii. non uos defendere et dare locum ire christus etiam dixit petro uolenti eum defendere. Convertere gladium tuum in uaginam Mathei xxvi. et habet xxiii. q. i. in principio hec potuerunt mouere glo. ad tenendum quod non liceat iure poni. Sed credo quod glo. non dicat uerum quod aperte demonstrari potest. primo sic ille actus est licitus iure diuino qui est consonus caritati. Sed defensa sui ipsius est huiusmodi ergo reprobatur maior nam caritate posita excluditur quilibet actus legis diuine reprobis quod cum ipsa se non comparatur cum reprobato sit et ipsa sit fundamentum cuiuslibet liciti probatur hoc de pe. di. ii. sed radicata et caritas est ut mihi uidetur. tex. in. c. quod radix ea. di. probatur minor nam precipimus caritatis est diligere proximum sicut seipsum ut capitulo proximos et ca. proinde de pe. di. ii. ergo implicat dilationem sui. et sui conseruationem si sic ergo defensionem ergo iure prohibet seipsum defendere. Preterea lege diuina licitum est proximum defendere a morte Etiam contra uoluntatem suam. ergo multo fortius iure diuino licet seipsum defendere quam perducta supra proximo. probatur alicuius de pe. xxiii. q. i. ipsa pietas et. quest. i. dupliciuit. Preterea lex diuina inibet quem uoluntarie tendentem ad destructionem sui ipsius hoc solum intendendo. Nam si ordinate tendit in alio. l. diuina approbatur licet istud consequendo consequenter sequatur destructio hoc non est inibitum utpote quis ut

consequatur statum beatitudinis affligit corpus suum. Nulli dubium quin afflictio sit corporis destructoria cum non intendit in hoc finaliter sed in fugam uiciorum carnet detractio uoluntarie propter fidem catholicam. Nam ipsi non intendunt finaliter ad destructionem sui corporis immo defensa fidei pro qua uoluntarie exponunt se morti temporali quod licet lege diuina. Sed se non defendens a morte cum potest se uoluntarie occidit et in destructionem sui tendit ergo. l. diuina inibitum probat maior. Nam. l. diuina dampnati reputatur si se ipsos occiderunt ut dicimus de iuda et sibi probatur minor. Nam se non defendens a morte cum potest nec subit aliquis de casibus ante dictis nec hoc pueniat ex pusillanimitate sui mortem appetit et palium se occidit et sic patet ac si per se ipsum. Iuxta regulam qui per alium de reg. iur. li. vi. Preterea lex diuina non deseruit totaliter actus puenientes a iure naturali sed ipsos modificat et reformat hoc patet per singulos discurrendo. Nam non penitus inibet cibum et potum non copulam nec filia sed ipsos actus modificat et reformat extremitates retinendo et medium approbando ut etiam lex moralis scdo et hic. iii. at. Si lex diuina inibere totaliter defensas sua ipsi cui actus ille pueniat ab instinctu nature totaliter destruere actum nature quod est absurdum ut. §. Preterea lex canonica hoc limitat ergo lex diuina non inibet probatur antedecum p. c. olim de resti. spoli. et clem. pastoral. §. ceterum de re. iudi. clarus per clem. in. c. si furiosus de homici. Nam lex canonica sualtemat legi diuine et sibi inuicem contradicere non possunt. Nam ad eundem tendunt finem licet uarie. Nam lex canonica tractat de gubernatione monarchie mundane ut societas humana conuerteretur in uniuerso quod etiam tractat lex ciuilis. Sed canonica ulterius tendit. scilicet disponendo et preparando ad statum beatitudinis eterne in qua tedit lex diuina. Et sic necesse est idempnitatem finis atenta omne inibitum lege diuina fore inibitum lege canonica et sic pretermisissis aliis que infinita possunt induci Restat concludendum quod glo. non dicat neque cum dicit iure celi non permitti defensionem sui ipsius. Ad auctoritates autem in contrarium inductas Rndum est ut respondet magister granus xxiii. q. i. §. si is ita uidetur quod itellans de interiorum cordis preparatione non aut de exteriorum corporis afflictione. Nam interius debet humilitatem cordis habere ut probat augustinus. in sermone de puero centurionis sic qui quies paratus debet esse et uide in capitulo paratos xxiii. q. i. Ex his inferitur tertium uidelicet licet unde insurgat hoc bellum et quo iure permittatur et. Profecto ego in omnibus se quor op. proau mei qui loquitur longe sapienter et quod iure naturali sit introducta defensio. etiam tenuit bar. l. ut uim. ff. de iusti. et iure et ibi uide bal. sed de materia uide etiam



bar. in. l. i. filius. ff. de dona. all' antè iura bar.  
in. l. facultas de iure fisci li. x. bar. in. l. cum  
mulier. ff. sol. matri. in. l. i. col.

### Capm. lxxxi.

Ira quartò 7 licet è uidendū  
pro cuius euidencia premitto q  
alò est querere quib⁹ competat  
defensa sui ipsius. Et aliud è que  
uere quibus competat indefinitè indictum  
propter defensionem. Si queramus quibus 2  
petit defensio. dico q omnibus entibus na-  
turalibus genitus ex corruptibilibus. Celesti-  
bus non competit defensio. propterea q non  
possunt pati ab aliquo contrario agente cum  
illa corpora non sint receptiva peregrinorum  
impressionum. ut ait phis secundo celi 7 mū-  
di. cum sint sine materia que est mater gene-  
rationis 7 corruptionis ut ibidem. Et sic nō  
est opus defēsa cum sint in captibilibus omnib⁹  
autem naturalib⁹ competit ex principiis na-  
turalibus defensio cum sint passibilia. 7 puz  
nit illa defensio ex iure naturali quod è uis  
quedam insita rebus similia de similibus pro-  
creatis. Nam similia pro creando conseruat  
seipsam in specie quod fieri non potest perpe-  
tuo indiuidualiter. Individualiter agendo.  
nititur corrumpere contrarium sibi resistēs  
7 e contra. Et iste est primus modus iuris na-  
turalis de quo glo. in ca. ius naturale. prima  
di. 7 notari consuevit in. l. i. §. ius naturale.  
ff. de iusti. 7 iure. Dic ergo si defensio cō-  
petit quicunq; materialibus naturaliter 7  
peruenit ex uiribus a natura cūlibet enti in-  
sitis. 7 quilibet sensualiter idicere singula na-  
turalia discurrendo. Sinautem queram⁹  
quibus competit bellum scilicet diffinitum.  
tunc dico q solis hominibus 7 non aliis q  
probat diffinitio belli cum dixi disforme appe-  
titus humano propositum x. Et hic connotā-  
dam est an omnibus hominibus competat. 7  
ideo an clericis competat.

### Capm lxxii.

Rimo quero an clericis liceat  
bellum particulare indicere re-  
sistendo 7 repugnando uidetur  
q non per ca. suscepimus. de homici. 7 per. c.  
sedicionarios xli. di. probant tex. xxiii. q.  
viii. §. i. 7 cum a iudeis. 7 ca. sequen. usq; ad  
§. bis ita. respondetur. pbatur in ca. cōmē.  
mor eadem causa 7 questione. Quod lice-  
at. probatur p ca. olim de resti. spoli. 7 si ue-  
ro 7 ca. ex tenore de sen. excomuni. i. di. ius  
naturale. ff. de iusti. 7 iure. ut uiuim. ff. d. ui-  
7 ui ar. l. iii. §. si quis clarior tex. in clemē.  
si furiosus de homi. Super hoc fuerūt opi  
quas recitat glo. xxiii. q. i. in summa. Nam  
aliqui dixerunt q nulli etiam layco licet uis  
ui repellere repugnando. hanc opi. repbat

clemen. nostra si furiosus de homicidiis.

Alii q laycis licet repercutere clericis si  
7 hoc eodē morbo laborat. Alii dicūt q si  
uis inferatur persona licitū sit uim repellere  
etiam repugnando etiam clericis hoc probat  
clem. predicta Sinautem rebus inferi tūc  
secus. An autem hoc scdm sit uerū iuris  
subiciendo huiusmodi dicere q in nulla ne-  
cessitate positus etiam si alr euadere si possz  
non debet alius occidere ymmo potius debz  
se permittere occidi Ita no. in. c. de bis. l. di  
glo. i. no. contrarium 7 in. c. sicut dignus de  
homici. in hoc non insisto quoniam ut dixi est  
tex. in clem. si furiosus de homici 7 si nō foret  
tex. super hoc expresse disponens p uel cōf  
hoc esset tenendum per rōes quas induxi ad  
probandum hoc esse inhibendum. l. diuina. Pō-  
dera q dixit. d. abb. in. c. significasti de homi-  
ci. in prin. 7 uide cūdez ibi in. iii. col. in fi.  
7 in pen. t. col. uide. d. abb. in. c. oliz d. resti.  
spoli. in. xii. col. uide. d. abb. in. c. sicut dignus  
in. c. d. homici. in. iii. col. uide. c. de eo. 7 gl.  
in. c. de his el fo. l. di. ibi doc. 7 c. uide abb. in  
c. i. de cleri. pugnam. in duello.

### Cap. lxxlii.

Secundo quero An liceat clerico  
se sic defendere etiam repugnando  
7 occidendo 7 an hoc liceat  
sibi in ecclesia 7 uidetur q non

Nam licet lex permittat generalr certos  
actos. Inhibentur tamen rōe loci unde gene-  
ralis pmissio restringitur p spalem pmissio-  
nem ut. l. sanctio legum. ff. de penis. l. alimen-  
ta. §. basilice. ff. de ali. 7 ciba. le. l. uxores. §.  
felicitine. ff. de le. iii. 7 c. pastoral. de rupt.  
Sufficit regula generi li. vi. Quod autem  
multi actus lege permittantur generali qui  
tamen spāl'r interdiciant pbat tex. in. c. decz  
de imu. eccle. li. vi. 7 c. vendentes. i. q. i. er-  
go sic in pposito 7 multo fortius cum p hūc  
actum possit pueniri ad pollutionem ecclesie  
ut in. c. pposuisti de conse. eccle. uel alta. 7  
c. vno. c. ti. li. vi. Preterea rixe 7 excita-  
tiones sunt generaliter interdicte cū sit spēs  
rixę ergo. In cōtrarium uidetur quia iur  
hoc permittētis generaliter loquuntur ergo  
sic sūt generaliter intelligenda. ut. l. i. §. ge-  
neraliter. ff. de le. pstan. Hanc partē cre-  
do vām cum iste actus insurgat ex iure nāl'i  
nec reprobat lex diuina 7 ratio iur hoc indu-  
centis sublit generaliter non habita discret.  
locoz nam hoc induxit ius naturale ut quis  
seipsum conseruet quantum durant vires prin-  
cipiorum naturalium. Et hec rō subest in ec-  
clesia sicut alibi. Ad inducta incōtrariuz  
facile est respondere. Nam illi actus inhiberi  
in ecclesia uel sunt de natura sui de genere  
malorum uel sunt de genere pmissoz ut con-  
tractus tñ ipsorum exclusio ne sunt in eccle-  
sia ppter moram fnādi nō inductū piculū

cum extra ecclesiam eque fieri possint ad libitum conerantur cum sint a prin. nolite. exposit facto necessarii. ut. l. sicut de act. 7. obl.

Et in proposito si si licet in ecclesia vim vi repellere ecce ppter piculum quia statim facilliter ad aliud cum dicitur sequi possit polutio. Solutio fortius conferenda 7 ponderanda est hominis conseruatio cum sit inrestituibilis q̄ ecclesia que reconciliari p̄t. Et forte dici potest q̄ ad hoc ut polluat sanguinis iniuriosi non requiritur sanguinis iniuriosi effusio ut no. in. c. uno de consecrati. eccle. vel alta. li. vi.

### Cap. lxxiii.

Terio quero quid de clerico celebrante An ei licitum sit dimisso officio si inuadatur se defendere 7 si occideret licitum sit continuatio officio celebrare. Primo apparet q̄ si debet discedere ab officio ymmo ipse teneat exequi donec possit. videi. tex. vii. q. i. illud 7. c. nihil. Preterea tpalia sunt postponenda spiritualibus. xii. q. i. p̄cipimus de pe. 7 rem. cum infirmitas 7 de epi. 7 cle. sancimus.

In contrarium pbat tex. n̄s ppter impedimentum temporale superueniens officium inchoatum dimittit inexplētus. Et ppter ea provident iura ut solus sit sacerdos in ecclesia ubi subest facultas bonorum temporalium pbat tex. in. c. statim alt. vii. q. i. illud 7. c. nihil ut unus suppleat continuando ubi alter dimisit nisi oratio misse sit cepta 7 non completa q̄ tunc alter reincipere tenetur cum illa non recipiant diuisionem ut in baptismo 7 ordie xiii. di. quorundam 7 ibi no. glo. in ea nihil etiam no. glo. Et aliquis inuadat celebrantem ut ipsum occidat hic enenit impedimentum celebranti. ymmo periculum mortis ut claret ergo licitum pretermittetur 7 per 2 sequens se ex periculo sibi occurrenti si p̄t expedire etiam occidendo. Ad allegata i contrarium facile est respondere. nam licet spiritualia sint proponenda temporalibus in genere tamen celebratio hoc casu non est pponenda tamen hoc casu propter dampnum in re p̄bile lex hoc p̄o permittit quod non contingit in spirituali post posito alio casu q̄ per alium restaurari potest vel per eundem. periculo excludo de secundo huc argumento dico q̄ si etiam occiderit se defendendo q̄ poterit reassumpto officio celebrare dummodo adfuerit illa de quib' lo. cle. si furiosus. Nā nullum peccatum cum hoc fecerit legis auctoritate cuius auctoritate nemo peccat xiii. q. iiii. nullam irregularitatem incidit ut in p̄e dicta clemen. si furiosus ergo nullum uidet subesse impedimentum cum possit celebrare ut probat cle. Hoc dictum proavi mei refert ut preclarum 7 legitur dominus abb. in capitulo clericis in principio de uita 7 ho

nestate clericorum c̄.

### Cap. lxxv.

Quarto posset queri argui 7 solui de baptisante ordinante 7 confirmante 7 inungente etiam in singulis sacramentis. An sit licitum eoz collationem postponere etiam si inchoauerit ppter tutelam sui. Et in omnibus dic ut supra.

### Cap. lxxvi.

Quinto q̄ro. Sacerdos baptizat puer qui est in mortis piculo 7 incidit inualio sacerdotis ut occidatur. Quid peligendum de iure an perficere collationem sacramenti ne cedat puer sine baptismo 7 ipse sacerdos occidatur vel contra p̄tollendum mortem p̄prias euadere 7 pmittere puerum mori sine baptismo. Sic forma questionem de sacerdotis ferente corpus xpi infirmo in extremis laboranti. Pro primo apparet q̄ sacerdos potius debeat se pmittere occidere q̄ puer sine baptismo mori. Nam si puer moritur sine baptismo moritur eternaliter ut pbat August. ad petz diaconum de conse. di. lili. firmissime 7 c. regnerante. c. d. 7. c. nulla. c. di. pbat apostolus ad ephes. iiii. ppter delictum vniuersos omnes in dampnatione sic originale peccatum cuius effectus non est extinctus p sacramentum baptismatis inducit condemnationem eternam. Sed sacerdos solum temporaliter moritur si alia necessaria p salutem imbut. Sed mors temporalis postponenda est sp̄iali Sic arguit August. xiii. q. iiii. displicet 7 c. ipsa pietas. Ergo potius eligere debz sacerdos mori ne puer in eternum se pereat Preterea inter duo mala minus malum est eligendum. xiii. di. nervi testiculorum cur si. et minus malum est mors tpalis q̄ eterna ut candē ipsa pietas 7. c. displicet. xiii. q. iiii. mors aut sacerdotis temporalis ergo peligenda. Precipuus actu caritatis est q̄ quis proximi diligat de. pe. di. li. proximos 7. c. pinde 7. c. caritas est ut mihi uideatur ad hoc nisi sacerdos eligat salutem eternam Pueri uite 7 non suam tpalem non diligit ipse sicut seipsum 7 sic caritate carebit q̄d pbat. Nā uita eterna sine cōparatione p̄ualeat uitam temporalem ergo p̄eligendo uitam temporalem sibi uite eterne proximi multo magis se diligit quam proximum 7 sic remanet caritate uacuus.

Preterea illud p̄eligendum est ad cuius productionem pauciora mala sequuntur 7 ad mortem sacerdotis minus malum sequitur q̄ ad mortem pueri sine baptismo. ergo peligenda mors sacerdotis probatur maior nam hec ex regula in moralibus q̄ plura ceteris paribus deteriores sunt paucioribus 7 magis fugienda probatur in cōde uerum xiii. di.



probatum minus. nam si eligatur sacerdotis  
uita sequitur duo mala uidelicet mors eter-  
na pueri ut supra dictum est. et neglectus cur-  
animarum quod mortale est ut in ca. cu sit  
ars de eta. et quali. Sin autem preeligitur  
mors temporalis sacerdotis non sequitur nisi  
si illud malum scilicet temporalis mortis quod  
attentu qualitate actus in se sine comparati-  
one minus malum est morte perpetua ergo i-  
ferendum ut supra. In contrarium uiden-  
tur textus qui loquuntur generaliter conce-  
dendo cuilibet facultatem se defendendi in ca-  
su necessitatis sufficit cle. si furiosus lepi al  
legatis. Confirmatur per iura que dicunt  
caritatem incipere a seipso ut. l. pates. C. de  
seruit. et aqua et ca. petico de iure iuran.

Solutio proferenda huius questionis et so-  
lutionis eiusdem est examinare casus indu-  
bitatos. nam sunt casus indubitati in thema-  
te propolite. Et ecce si ponamus quod puer per alium  
etiam laicum uel mulierem baptizari possit.  
esto quod sacerdos dimitteret a sacramento col-  
lat. non est dubium quod sacerdos deberet pre-  
eligere salutem suam. ubi etiam puer uerisiti-  
ter non posset uiuere usque ad expeditionem pe-  
riculi et hoc uerisimiliter constaret non ha-  
berem questionem dubiam quo minus sacerdos  
haberet preeligere salutem suam nec rationes  
inducte excluderent contra hanc casum.

Si poneremus questionem in adulto non au-  
tem in fante qui adultus licet non sapiat bap-  
tismus fluminis tamen debeat si uerum ha-  
beat fidem cum baptismo fluminis. Adhuc  
non haberem questionem dubiam immo di-  
cerem ut supra preeligendam salutem sacer-  
dotis. Sed questio procedit in puero de quo  
constat quod morietur sine baptismo. Si sa-  
cerdos diuertat de hoc probabiliter dubitare-  
tur in primo casu ubi res de hoc constaret  
dicerem preeligendam mortem temporalem  
per iura supra inducta et fidor per ea que ha-  
bentur vii. q. i. §. hinc in uer. cum uero speci-  
aliter a contrario et quod ibi no. glo. Nam ubi  
solus prelatus queritur nec ecclesia uita pot-  
est esse tuta. eo fugiente exponere debet se mor-  
ti pro ipsa ut ibi. hec maxime procedant in  
proprio sacerdote et parrochiano. et mouent  
me rationes supra ad hoc inducte. ubi autem  
foret dubium probabile de morte uel uita pue-  
ri usque ad expeditionem periculi et constaret  
de morte prebiteri nisi diuerteret. Ad hoc  
crederem preeligendam mortem sacerdotis  
cum in incertis non certis locis sit coniec-  
ture. l. continuus. §. illud. ff. de uer. obli.

Ubi autem probabile dubium foret hinc inde  
crederem ut supra primo membro et hec de  
sacramento baptismatis. In corpore autem  
christi. si uera esset glossa que est in ti. quod i te  
de peni. et remi. que dicit viaticum non esse  
sacramentum necessitatis tunc questio non est  
multum dubia. Sed illa glossa non est uero primo  
alia glossa. non contrariam in. c. uentis de tras

act. in prima glo. et illa glossa est uero et non de sa-  
crament. non te super rubrica probare uidetur  
tex. in. c. omnes de peni. et remi. tunc adhuc hoc  
suppono per quod sit sacramentum necessitatis ad  
hoc dicerem preeligendam uitam temporalem sa-  
cerdotis moneor ex hoc quia etiam si quis de-  
cedat sine corpore christi ubi per eum non stetit  
et non contempsit non moritur eternam sicut  
in baptismo. Idcirco in hoc casu non conclu-  
derent rationes. §. inducte. Idem dicerem in  
sacramento penitentis quia etiam sine oris  
confessione decedens ubi per eum non stetit  
sola contritionis uirtus saluat eum ut no. de  
pe. di. i. In summa et in. §. bis ita. Idem per  
omnia dicerem in sacramento unctionis quod §.

### Cap. lxxvii.

Exto quero nunquid monacho  
liceat se fir defendere sine licentia  
prelati sui uidetur quod non Nam  
monachus non iubeat nec ubi

debeat actum uoluntarium nisi de licentia sui  
prelati quia sine licentia caret uelle et nolle.  
xii. q. i. uolo. et c. et c. non dicatis de elect.  
quorundam et c. si religiosus li. vi. et de. reli-  
giolus de cura. Et iste actus defensionis pue-  
nit a mero libertatis arbitrio quia potest et  
iam uelle ergo non poterit sine licentia prelati  
Preterea monachus est mortuus mundo. xvi  
q. i. monachi et c. placuit ergo sibi si contem-  
nunt actus tendentes ad defensionem uite. Prete-  
rea monacho interdicti sunt etiam actus in  
uauum tendentes sine licentia prelati ut siue  
uouere peregrinari et similes actus per iura sta-  
tim allata. In contrarium uidetur. Nam de  
sensu corporis sui puenit ex naturali instinctu  
nec repudatur a lege diuina nec altera ergo  
licet monacho cum quantis ad naturales ac-  
tus ad hunc nalem non sit mortuus sed quo  
ad civiles solum ut iuribus. §. allatis. Solum  
credo quod si monachus sine periculo mortis possit  
se defendere et licentia prelati sui petere possit  
ipsam petere debet hoc probat iura inducta ad  
primum partem. Sin autem non possit licentiam pre-  
lati petere quia non est presens et quia periculum  
est in mora tunc poterit sine licentia prelati  
Moueo ex hoc quod iste actus est iure natura-  
li inductus quem prelatus non posset totali-  
ter sine causa interdicare immo forte nec pas-  
cum nam hoc induxerit nec in his subditi te-  
nentur prelato suo. sicut totaliter et sine cau-  
sa interdiceret cibum et potum mouet me gl-  
que est in ca. non dicatis. xii. q. i. Nam  
querit ibi glossa. an liceat monacho elemosinam  
facere pauperi fame morienti nisi subleuias  
ei sine licentia prelati et tenet quod sic. Nam hoc  
casu necessitatis tenetur. Si ergo uidere  
potest alterius uite per actum alias ibi bitus  
sibi quanto magis uidere poterit uite sue per  
actum sibi a naturalibus institutis si uideo quod  
immo dicit raymundus in summa de neg. lecu

laribus. §. sed queritur circa hoc qd si abbas inhibens ipse monachus facere debet quia tunc ipse non obediens homini sed deo. viii. di. quod scire. Pondera qd dixit dominus abbas in e clerici de uita et honestate clericorum in per multima col.

### Cap. lxxxvii.

Optimo queritur nunquid suo liceat sic se defendere sine iussu domini uideretur qd non. Nam actus seruorum pro nullo habent ut. l. seruus. C. de rei uen. et l. uia certis. ff. de iudi. et l. si quis mihi bona. §. iussu. ff. de acquiren. pos. In contrarium uidetur. nam hodie mors seruorum non est in potestate dominorum ut. l. i. ff. de his qui sunt sui uel alie. laria. Confirmatur nam actus naturales non potest dominus totaliter interdicare seruo per quorum interdictionem seruus periret ut. l. i. supra prox. al. So. ut supra per dictum est de monacho. Pondera qd bene loquitur proamus meus. dicendo qd eadem distinctio hic dari debet que data est supra in monacho. qd conueniant adinuicem secundum bar. in. l. cum fundus. §. seruus in fi. ff. si cez. pe. uide Juno. in ca. cum olim de priuilegiis. uide bar. in. l. i. ff. de stip. seruorum et in. l. si liber homo cod. de. ri.

### Ca. lxxxviii.

Circa queritur nunquid illis quos licitum est occidere impune utpote bannitis. de quibus al. disponunt leges. municipales qd in pume offendi possunt ut licitum sit se defendere. uidetur qd non. nam si a priuato iuste inferatur uolentia non licet se defendere ut. l. liii. ff. an. l. acquil. Et hic iuste inferitur. qd lege auxiliante ut. l. iuste. ff. de acquiren. pos. Confirmatur si uolentia inferatur a publica persona non licet se defendere. ff. de iniur. l. iniuriarum. §. i. ff. de rei uen. l. qui restitueret xi. q. iii. qui resistit. Et iste hic gerit uicem publice persone. Nam lex facit ipsum ministrum permitiendo priuato ipsum punire. Et de hoc potest lex dare iurisdictiones priuato ut. l. i. quia. ff. de iur. o. iudi. et in. c. l. ne prelati uices suas ubi no. ergo inferre huic non licere defendere. In contrarium uidetur qd hic est priuatus immo et si foret publica persona apparet iniuste inferri uolentiam cum inferatur iuris ordine non seruat et sic contra iusticiam ordine attemptat. ut. l. prelati. tam. C. de sententia et ca. quoniam de probat. So. puto ponderandum uerba legis. Nam aliquando lex permittit aliquid quod nullo iure prohibetur xxi. q. i. hac ratione. Aliquando lex permittit aliquid contra constitutiones humanas ut contrabere matrimonio

niam in quarto gradu xxxv. q. iii. quedam.

Tercio modo lex permittit tolerando non qd facit actum et illicitum. sed actum illicitum manentem illicitum non punit ut dicitur tex. in. c. denique liii. di. Nam commendentes carnes in nocte dominice carnis priuilegiu non puniuntur. et dicitur tex. permitti. l. non puniri propter multitudinem et scandalum sicut et permittitur. ad ulterium ut uideatur homicidium xxxviii. q. i. si qd ueneris et tamen ad ulterium non est licitum per legem sic permittitur sed actu manente illicito pena remittitur. Sic in proposito sit lex permittat tolerando et penam remittendo actu manente illicito propter odium banniti tunc crederem bannito licere se defendere nec habent articulum concludunt supra alata. Sin autem lex permittit poterit faciendum actum de illicito licitum tunc secus et isti modi permissionis non per glo. iii. di. omnes autem lex. So. Pondera quod dixit bar. et bal. in. l. ut uim de iusti. et iure in. li. col. Et pondera quia uidetur qd possit se defendere quis non possunt ei tolli que sunt iuris uisibiles sed defensio est iuris uisibilis de pastoralis ubi re indi. de hoc uide bar. in. l. libertas. ff. de in ius uocan. que sequitur fulgo uide doc. in. c. cum inter. de except. uide que dixit bar. in. l. de pupillo in. §. i. ff. de opibus uo. et bar. in. l. si fide infor. §. si necessaria. ff. qui satisfacti. cogant. et de doc. in. c. dilecti except.

### Cap. ic.

Inter quintum versus contra quos competat hoc particulare bellum est uidendum circa quod queritur de pluribus. Et primo queritur an licitum sit alicui resistere contra superiores suum et glo. in. l. ut uim. ff. de iusti. et iure dicit qd non per. l. qui restituere. ff. de rei uen. et l. iniuriarum. §. i. ff. de iniuriis probat tex. in. c. qui resistit. xi. q. iii. Ego non credo qd gl. simpliciter dicat uim sed credo distinguendum aut constet qd iniuste agit Aut constet qd iuste Aut dubitetur. Primo casu credo resistendum ut. l. prohibetur. C. de iure fisci. et l. deuotum. C. de meta. li. x. Et hoc maxime cum aliquid est officium suum agit ad ipsum si spectat. Secundo casu non est resistendum ut. l. qui restituere. ff. de rei uen. et l. iniuriarum. §. i. ff. de iniur. Tercio casu non est resistendum nisi sit tale factum quod non possit post tempus restaurari nam talia facta pro infectis haberi non possunt ut. l. in bello. §. facto. ff. de capto. Nam in talibus. l. inhibens appellari ante diffinitiam permittit appellari ut. l. ante sitit et epus. ff. quorum appellatione non recit. Tu pondera quod dixit bar. in. l. ut uim in. li. col. de iusticia et iure et ibi bal. uide notata in. l. prohibetur. C. de iure fisci. li. x. et ibi bar. uide quod sapienter locutus est Cy. in. l. i. C. unde uide Junoc. in. c. si quando ubi offi. dele. Junoc



in. c. dilecto de sen exco. li. vi. gl. in. c. ex lris  
de offi dele vide nō. in. l. qm. C. de appel.

### Capitulum lxxx.

Secundo querit' gl. in. d. l. ut uim  
quid si index est potestas aliqd  
iniuste agat Respondet Mar.  
q non est resistendum p. Linu-  
riarum. §. i. ff. de iure iuran. Sz conuenit  
magrātum durante officio si est de minorib'  
uel finito officio si est de maioribus ut. ff. de  
iur. i. l. si pare litarum 7. l. iii. ff. quod me. ca.

Hanc glo. non puto ueram in facto in re  
parabili. pone q index in uadat me ut ocl-  
dat 7 est de maioribus. nunquid expectan-  
dum sit donec finiatur officium uel si est de  
minoribus debet expectari donec porrigatur  
querela coram preside absit qz talia facta ut  
pre dixi in. l. in bello. §. si de capte.

### Ca. lxxxvi.

Exco queritur nunquid licitus  
sit filio contra patrem. uidetur  
q non. propter ius patrie pote-  
statis. C. de patria potes. per to-  
tum. Confirmatur nam non licet filio cō-  
tra se ergo nec contra patrem cum censcan-  
tur una persona. C. de in pu. 7 al' substi. ul.  
insti. de inuti li stipu. §. d. qui. C. de agri. 7  
cen. l. cum scimus in auc. de iure iuran. amo.  
presti. §. l. In contrarium uidetur. Nam  
hec defensio peruenit a iure naturali ut pro-  
batum est. q. in tercio membro principali nec  
aliqua lege reprobatur ut ibi deductus ergo  
patria potestatis iure civili inducta illud ius  
filio competens non. tollit cum iura natura-  
lia civilibus non tollantur insti de iure natu-  
rali gen. 7 ci. §. naturalia. v. di. ius naturale

Solutio dico q si patri aliquid agat con-  
tra filium corrigendo in his que permittunt  
a iure patrie potestatis non excedendo q si  
liceat filio se defendere qz i hoc ius civile q  
iduxit patriam potestatem limitat ius natu-  
rale quod fieri potest ut. q. deductum ē. In  
autem pater aliquid agat contra filium ex-  
cedendo sibi concessa ex iure patrie potesta-  
tis. tunc crederem licitum esse defendere.  
Et hec procedunt in filio degente in potesta-  
te patrie. In emancipato autem minor ē qō  
ad inducta in contrariam patet solutio per  
iam dicta. Tu pondera quod dixit bar. i. l.  
ut nō de iusti. 7 iure. qui uidetur concludere  
re quod pater uerberans filium uel dominus  
seruum presumitur facere non animo in iurā  
di sed animo corrigendi. Et ideo presumitur  
uerberatio licita. ideo non est licitum resiste-  
re xi Sed questio est quando esset in lici-  
ta 7 inordinata tunc approbo distinctionem  
prota mei 7 posset allegari illud quod scribi-  
tur in ar. in. c. esto subiectus xcv. di. si pater

non habet filium in filium. ergo filius cum  
non habebit in patrem.

### Capitulum xcii.

Quarto quero nunquid monacho  
hoc liceat cōtra abbate uidetur  
q non. Nam monachus caret vl-  
bratione uoluntatis sine licētia  
abbatis sui. xi. q. i. nolo 7. c. non dicatis de  
statu. mona. cum ad monasterium. Sed iste  
actus puenit ex Imple uoluntatis qz posset  
uelle. Nec hic interuenit licētia plati ymmo  
taciti facta contradictio que plus opatur q  
ualis. ff. de edili edicto. l. si tamen. §. ei qd  
ff. de legi. l. de quibus in si. de appel. c. ad audi-  
entiam 7. c. ut nostram 7. c. dilecti. Con-  
firmatur Nam monachus mortuus est mōdo  
xvi. q. i. monachi 7. c. placuit 7. aut. ingressi  
C. de sac. l. an. eccle. ergo sibi non competit  
actus defensionis uite mūdane. In contrariū  
apparet. Nam iste actus puenit ex iure nālī  
nulla lege positum reprobato licet modificato  
ergo rō denegatur monacho qui licz sit mor-  
tuus ciuilitet in iuribus supra allatis. Solo  
si prelatus contra monachum aliquid attēp-  
tat de his que pmittuntur a iure cōi in cor-  
rigendo 7 similibus uel ex constitutionibus  
ordinis tunc monacho non licet resistere ym-  
mo nec hoc casu audietur appellans ut de ap-  
pellat. cum spālī 7. c. cum peiore. Sin autēz  
prelatus aliquid attēptet contra monachū  
in his que non pertinent ad officium suum  
iure uel constitutionibus modificatum tunc  
licet se defendere maxime in his que propter  
moram periculum ingerunt utpote si abbas  
monachum inuaderet ut ipsum subito occide-  
ret quid miri cum etiam monachum liceat  
abbatem impetere accusando si aliquid cōtra  
debitum agat ut. c. ex pte de accusat. 7. c.  
cum olim. c. ti.

### Cap. xciii.

Quinto queritur nunquid hoc lice-  
at seruo contra dominū apparet  
q non cum potestas sit domini  
contra seruū ut. l. i. ff. de his q  
sunt sui uel alie iuris. Confirmatur. Nam  
seruus tenetur dominum picillantem iurare  
ut punitur ut. l. si quis in graui ad fil. ergo  
ipsum impugnare non poterit ut. c. vno de  
natis ex lib. ven. 7. c. conquirente de resti-  
spoli. ff. si seruit' ven. l. altius. ff. de condi. in  
de. l. frater a fratre. xxvi. di. vna tñ. xxv.  
di. c. ultra. xvi. q. i. si ueliter. ff. de fideiul. l.  
tutor. ff. de admi. tu. l. quotiens. In contrā-  
rium apparet. Nam hodie restricta est po-  
testas dominorum in fno. l. i. ff. de his q sunt  
sui uel alie iur. Nam hodie non habent potes-  
tatem trucidandi nec acriter eos affligēdi  
ergo. Solutio ut dictum est de monacho

Ne minus aliquid attemptet contra seruis  
bifos una permittunt non licet seruis se de  
fendere. Nam in hoc limitantur actus a iure  
naturali provenientes a iure politico limita  
re potestatem duorum in seruos. Sinau  
tem attemptet aliquid ultra q̄ a iure pmil  
sum est. tunc secus q̄ in his licet serui nō sint  
cogniti quo ad naturales qualis est iste. ⁊  
hec solvantur consimiles questiones. Nā  
quid vasallo contra dominum. nūquid disci  
pulo contra magistrum. nūquid militi con  
tra propositum. nūquid uxori contra mari  
tum uniformē solutiones solvantur ut si attēp  
tetur quod ius permittit non licet se defende  
re. Sinautem ultra ⁊ contra iuris debitas  
tunc secus ut supra plene tactum est. Ex  
his breuiter inferitur contra quos ex regula  
supra dicta possent q̄ones infinite solui.

### Capitulum xciii.

Tres sextum est uidendum res p  
quibus liceat. Et primo circa p  
sonas pro quib⁹ sit licitū ⁊ pone  
in dubitatum pro defensione sui ip  
sas hoc probat tex. in l. ut uiui. ff. de iusti.  
⁊ iure. Et l. i. §. uim ui de ui ⁊ ui ar. ⁊ l. iiii  
ff. ad. Laquil. ⁊ l. scientiam. §. qui cum alr.  
eo. ci. clare in de. i. de homici. de aliis quero.

Tu pondera hic que dixit proamus meus  
⁊ hic seq. capit. scilicet de marito erga uxore  
de fratre ⁊ aliis coniunctis ⁊ c. nam bartho.  
tangit in l. ut uim. ff. de iusti. ⁊ iure in l. iiii.  
col. ibi bal. uide dominum abbatem in ca. oli  
de resti ⁊ spoliis xli. col. uide glo. xlii. q. xlii.  
in summa. Et uide Jnno. in ca. si uero i sen  
tenciis excomuni. uide ibi dominum abbates  
aliquid per dominum abbatem in capitu. cle  
rici de uita ⁊ honestate clericorum ne tibi  
sit molestum. uide oio bar. in l. tutor. §. si tu  
tor inimicus. ff. de suspec. tuto ⁊ alista. per  
eum ibi. uide bartho. in l. lex cornelia. ff. de  
injuris uide bal. in l. raptos in. li. col. C.  
de epi. ⁊ cleri. uide dominum in capitulo di  
lecto de senten. excomuni. libro sexto in iiii.  
col. Uide cy. bal. ⁊ soli. in l. i. C. unde ui. ui  
de ange. l. i. §. iur. precepta de iusti. ⁊ iure bar  
in l. si quis in seruitute. ff. de furtis ⁊ c.

### Capitulum xciv.

Primo quero An liceat patri  
pro filio expediendo parius dubia  
sine argumentis dicendum q̄ sic  
Nam pater filium ut scilicet dil  
git ut l. isti quidem. ff. q̄ me. ca. Nam ppter  
huc ppetuatur in eum. ff. de v. signi. libellorū  
in si. etiam quia una persona censetur. C. de  
impu. ⁊ aliis substi. l. si. in aut. de iure iuren.  
amo. presti. in prin. instit. de inutili stip. §. ei  
quem hoc clarum idē contra. C. de illi⁹ p pte

### Cap. xcvi.

Secundo queritur Nunquid hoc  
liceat marito p uxore clarus est  
q̄ sic. Nam iniuria uxoris seu  
uxori irrogata est illata marito  
⁊ iniuriar. actio sibi competit ymmo ⁊ spōso  
ut l. item apud. §. sponsum. ff. de iniuriis ⁊  
marito licitum est occidere uirum repertum  
adulterantem cum uxore. l. marito ⁊ l. cap  
te quinto. ff. de adul. ⁊ l. graccus. C. de ti.  
ymmo ⁊ fabulantem monitus p iura aut nec  
incidit in canonem si quis suadente. xli. q.  
lii. ob hoc mittens manus uolentas in clericū  
ut. c. si uero. §. nec ille de sen. excoicat.

### Capitulum xcvi.

N liceat p fratre ⁊ aliis cōiunc  
tis putat. ut p uxore ⁊ aliis per  
sonis non coniunctis ⁊ glo. in l.  
ut uim. ff. de iusti. ⁊ iure dicit  
ponderandam affectionem allegat. l. isti  
quidem. ff. q̄ me. ca. ⁊ l. i. ⁊ l. cum seruis. ff.  
mandati. Alii uolunt dicere q̄ p omnib⁹  
coniunctis licet q̄ pbant sic. Nam si quis  
iniuriatur uti coniuncto omnibus iniuriari  
uidetur licet non competat aliis iniuriarum  
actio ut l. lex cornelia in prin. ff. de iniuriis  
Confirmatur nam p defensione rerum licet  
uim ui repellere. l. i. §. unde ui ⁊ l. iiii. §. cum  
igitur. ff. de ui ⁊ ui arma. ⁊ licitū est uolēt  
uim ui repellere p defensione rerum amicos ⁊  
coniunctos conuocare ergo licitum est ami  
cis ⁊ coniunctis iuare. Et sic concludunt  
pro non coniuncto indistincte hec licere.

Hec opinio confirmari uidetur. Nam ho  
mo homini officium debet. ut l. cum seruus.  
ff. de de seruus exor. ergo ex illo officio iura  
re licet. Confirmatur per l. aditos. C. de  
appella. melius per l. non tū. ff. de appel. et  
am extraneus pro condemnato in crimina  
li appellat etiam ipso nolente. probatur per l.  
iui. C. de libe. ca. Dominus Ja. but. in l. ut  
uim distinguit hunc modum. Aut ego ut ego  
sine mandato iniuriati uolo defendere iniuri  
atum per uiam iuris ⁊ possum non autē fa  
cti ⁊ sic intelligitur leges statū allegare ad  
tos si tū ⁊ l. iiii. C. de libe. ca. at uo hoc fa  
cere non ut ego sed mādante iniuriato ⁊ tūc  
possum etiam p uiam facti ut l. iiii. §. cui⁹ hgi  
ff. de ui ⁊ ui arma. Alii distinguit aut illi  
erant in comitiam iniuriam passi ⁊ possent  
tunc ppullare iniuriam plone eius illicitas ar  
eius quod nō. l. item apud labronem. §. si q̄  
uirginem. ff. de iniuriis al non ut tenet glo.  
indistincte in l. i. C. unde ui abt Cyn⁹ hanc  
opinionem recitat in antepenultima q̄stione.  
Alii ut Ja. de ra. dicunt indistincte q̄ licet.  
Et ratio Nam negocia mea possunt iuari p  
aliam ut l. i. ff. de neg. gest. Multo fortius  
⁊ plona iuari poterit cū plone rebus pferat



ut. l. facinus. C. de sacrosanc. eccle. aliat pro  
calu. l. graccus. C. & adult. Si dicas ibi fuit  
filius soluit per. l. liber homo. ff. ad. l. acquil.

Non obstat. l. cu fundus. ff. de ui. 7 ui ar.  
Nam ibi ex intervallo uoluit q non licuissz  
etiam per se. Non obstat fm euz. l. ut vim  
ff. de iusti. 7 iure ubi dicit ob tutelam sui cor  
poris Rñdet p. l. si fuis. ff. de leuiis expor.  
Hanc opinionem uidetur sequi Cy. in. l. i. C.  
vnde vi in qde ante pens tims. In his tot  
7 tantorum crederem ponderandum q mix  
tim formaui qdem de coniunctis 7 eñeis q  
queri potest. An liceat coniuncto uel eñeo  
alterius uolentiam ui repellere sicut liceret  
ppriam quoad euitandā penā irregularitatis  
l. sit cñicus uel laqueus hoc casu occidens uel  
mutilans. potest etiam queri de utriusq an  
licitum sit ut non incidant aliam pecuniam  
legis uel canonis. Sed queramus de prio  
dico casum in clem. si furiosus de homici. lo  
lum euitat penam irregularitatis. si hoc faci  
at seipsum tantummodo defendendo non au  
tem alium etiam patrem uel filium hoc pro  
bat tex. dicens. Idem censemus de illo q mo  
tem aliter non uolens euadere suum interfe  
cit uel mutilans in iudicem loquitur de suo  
non autem de iniuria alterius. hoc ibi etiam  
nota glo. super uerbo suum. Et hoc casu re  
puro planum. Sin autem queramus an li  
ceat ut uideatur alii pene legales uel cano  
ce 7 tunc distingue aut loquitur de pena ex  
comunicationis. Si hoc casu percutiat cleri  
cum alterius uolentiam ui repellendo. tunc  
dico cum Inno. q si defendat patrem mrem  
uxorem filium uel filiam euadit penam exco  
municationis allegat ipse. l. isti qdem. ff. quod  
me. ca. 7. lege. l. i. si uir. ff. ad fil. Et est  
rō differentie inter hunc casum 7 precedētē  
Nam irregulariter contrahitur etiaz sine do  
lo ut est uidere in iudice iuste occidi mādare  
l. Si qui in aliquo sed in excoicatōe in illaz  
cas. lata requiritur diabolica instigatio ut. c.  
si quis suadente xvi. q. iiii. In extraneis  
autem non euadit penam illius canonis etiaz  
si miles mandato iniurari hoc fecisset. Aut  
loquimur de alia pena pñali uel pecuniaria  
7 tunc distingue. Aut uolentes vim repellere  
a uolentiā passo sunt coniuncti aut extranei  
in conuictis dic ut in glo. in. l. ut uim & iusti.  
7 iuru etiam limitando p. l. in priuatis. ff. de  
iudi. 7. l. lex cor. ff. de iniuriis in prin. Aut  
loquimur de eñeis 7 tūc aut illi extranei e  
rant deputati p comitiua uolentiam passi. 7  
tunc licet ut. l. Item apud labconem. §. si  
quis & ginem. ff. de iniuriis. Aut non erant &  
putati p comitiua 7 tunc aut uoluerunt ex  
intervallo repellere 7 nō pñt ut. l. cu fundus  
ff. & vi 7 vi arma q nec ipse sic proprias re  
pellere posset 7 hoc defēsa ficti. Defensam  
autem iuris etiam possent ex intervallo face  
re ubi iara hoc permitit ut. l. nō tñ de apel  
7. l. i & lib. ca. 7. l. aditos. C. & appel. 7 p hoc

non pñto ueram opl. domini. iacob. butri. qui  
dicit q indistincte defēsa iuris facere pñt.  
Casus in quibus tertio non licet accōem seu  
acculationem pponere pro iniuriarum passo  
tolle exemplum regulariter in priuatis delic  
tis. Sic ergo solus ubi iura pñtunt. Sin  
autem uoluit incōtinēti repellere tūc distig  
uerant cum domino Jaco. aut uocantur per  
uolentiam passum 7 tunc licet. Naz licz  
uolentiam passo aduocare amicos p defēsa  
rerum ut li. iii. §. cum igitur. ff. de ui 7 ui ar.  
ergo p defēsa pñone que pponderat ut. l. i. fa  
cimus. C. de sac. sanc. eccle. aut non Aduo  
cantur 7 tunc licet tex. est in. c. dilecto de  
sen. exco. li. vi. p hoc facit. xxi. q. iiii. non  
inferenda 7. c. hōtitudō de senten. exco.  
quante faciūt nō. in. l. i. C. & conuer. 7 mer  
ca. Et sic in hoc credo vām opinionē opl. Ja.  
de ra. tex est in. c. dilecto. Nā dicit ibi tex.  
Nam cum liceat cuilibet suo uicino uel prio  
p repellenda ipsius iniuria sui iptiri auxiliū

#### Caplm xcvlii.

Quarto queritur quis uidit quem  
occidi nisi iunct ipsum an teneat  
tur ipsius iurare. uidetur sic per  
l. necare. ff. de libe. agno. Cō  
firmatur hoc ex officio quod debet homo ho  
mini ut. l. si seruus. ff. de seruus expor.  
Hoc cōfirmatur. Nam error cui si restituitur  
approbati uidet lxxxi. di. error 7 ca. cōfen  
tire 7 ca. quod enim In contrarium uide  
tur. Nam licitum est alicui precium recipere  
ut metum illati alteri excutiat. ff. quod me.  
ca. l. metum. §. sed licet. Confirmatur naz  
in casibus quibusdam hoc est ipse q quis te  
neatur alium sic iurare ut. ff. ad fil. l. i. §. hoc  
autem 7. l. si. C. eo. ti. ergo contrarium p co  
mune. ff. admini. l. i. 7. l. ius in figurale. ff. &  
legibus glo. tenet q iurare tenetur uerbo si  
facto. regula non culpa. de regulis iuria. Nec  
obstat q debet homo homini q debet sine pe  
riculo sui ut. l. habet. ff. de ope. liberto. 7. l.  
nepos proculo. ff. de uerbo. signi. Tu pon  
dera ea que sapienter loquutus est bar. in re  
gn. culpa de reg. iuris 7 bar. in. l. i. §. sed si i  
ff. ad fillo. ange. in. §. iur. precepta. ff. de iu  
sti. 7 iure. uide ca. quante de sen. exco. do  
abb. i ca. i. de offi. dele. in ii col. in simili uide  
glo. in si. lxxxi. di. uide ca. negligere li. q.  
vii. cum glo. cum ca. seq. uide pñ. andia. in. c.  
i. de. confes. li. vi. bar. in. l. ut uim in penult.  
cel. de iusti. 7 iure.

#### Caplm xcviij.

Quinto queritur de his qui tenē  
tur alius uolentiam pro puliare.  
7 circa hoc querit de pluribus.  
Et primo de uasallo 7 non ē du  
blum q tenetur iurare dominum al. perdit

secundum ut in uisibus scudorum que fuit prima  
causa am. fca. ca. prima autem 'ca' §. item q  
dominum 7. §. lq.

### Caplm c.

Secundo queritur d' seruo. Et q  
teneatur iurare dominus ē tex.  
in. l. prima. §. hoc autem. ff. ad  
fili. C. eo. l. ultima.

### Caplm c. i

Ercio queritur d' mltte 7 q' testi-  
atur iurare prepositū belli si po-  
test alias capite ponitur. est tex.  
in. l. omne delictus. ff. de re mi.  
7. l. iii. §. filio. ti. ff.

### Caplm c. ii.

Quarto queritur uasall' uids do-  
minum in uasallum ex parte una. 7  
patrem ex alia uterq' pariter est  
in mortis periculo nisi iuuetur.  
nec iurare potest. nisi alterum quem iuabit  
patrem an dominum glo. que est xxiii. q. 7.  
de forma dicit q' uasallus tenetur iurare do-  
minum contra filium proprium inducit q' si  
lius tenetur patri iure nature. Sed uasall'  
domino uinculo iuramenti ut in ufi. seu que  
fuit prima causa bene amit. capitulo quinto.  
no. Et secundum hoc foret decisa questio  
q' teneretur iurare dominum cui plus atri-  
gitur. In hac questione dicerem contra-  
rium et moueo ex hoc. Nam filius tenetur  
patri ex uinculo natural' ex quo ab eo proge-  
nitus tenetur 7 uinculo ciuili q' sub eius po-  
testate patria. Uasallus autem domino tene-  
tur uinculo ciuili tantum ut predicto capitu-  
lo de forma xxiii. questione quinta. Sz duo  
uincula uincunt unum in auc. de consagu. 7  
uteri fratribus in pncipio ergo confirmatur  
ratione prioritatis obligationis. Nam prima  
est uinculum paternum uinculo dominico.  
ergo primo ipsum iurare tenetur ut. l. potior  
7. l. qui balneum. ff. qui. po. in pi. ba. Confir-  
matur iuramentū prestitū uasallo. intelligitur  
saluo uinculo precedenti nā ius alteri questi-  
tum nō tollitur per secundam obligationē ut  
dicta. l. g. balnei 7. l. potior. Confirmatur per  
ca. peticio de iure iuran. nā iurādo dñō d' ipz  
iurādo nō intelligitur iurasse. Sic quomin'  
sapium iuuet q' domini q' bec pia caritas.  
ut. l. prela. C. de serui. Sed pater ē eadē p-  
sona cū filio iurisdictione ut. l. ultima cū con-  
cordan. C. de impu. 7. al' substi. ergo.

### Caplm c. iii.

Uinto queritur pone cleric' epz  
sui uidet in uasallum ex una parte  
patre ex alia uterq' pariter ē in

mortis piculo nisi iuuet nec iurari poterit ni-  
si alterū quē iuabit epi. an pa. car. hosti. l. c.  
grauem de excel. prela. arguit uterq' 7 put  
ibi ponitur plus astringuntur patribus spuali-  
bus q' carnalibus p hac facit. c. ii. de trāsa.

Si illa opi. est uia soluta est questio. Sed  
tamen in hac questione credo ut. d. prima. q  
Iudico capitulum fide postū. Nam ibi  
dicit tex. q' si postulerit contra ecclesiam  
7 non pro suis perdit beneficium ergo acon-  
trariis p suis posset. Induco. ca. peticio de  
iure iuran. inducendo ut. d. prima questione  
induxi. Et faciant motiua d. prima questione  
inducta 7 glo. in casu pietatum. xxx. questione  
lii. super vbo multo magis tenet q' in exhibitio-  
ne temporalium magis tenentur patri car-  
nali quam spirituali. In exhibitione autē  
reuerentie e contra. Idem nō glo. xxx. di. c. i  
faciant que nō. l. xxxvi. di. ne satis 7 capitu-  
lo quiescamus xlii. di.

### Caplm c. iiii.

Uia uisum est supra hoc membro  
An 7 p qb' ptois liceat hoc bel-  
lum indicare. Nunc autem suble-  
quenter queritur an 7 pro rebus  
defendendis licitum etiam sit hoc bellū indi-  
cere. Et circa hoc queritur de pluribus. Et  
primo p rebus iuste possessis. Et de his non  
est dubium tex. ē in. l. i. C. unde ui. pbat in. l.  
iii. §. si quis autem v. cum igitur al' est. ff. de  
ui 7 ui arma. 7. c. olim de restitu. spoli. Tu  
pondera q' dixit bar. in. l. ut uim de iusti. 7  
iure in. l. iii. col. uide. d. abb. in. c. significasti.  
c. l. ii. de homici. in prin. 7 ibidem in quarto  
col. in fi. uide bar. in. l. iii. §. cum igit. ff. d' ui  
7 ui arma. uide. d. abb. in. c. olim de resti. spo-  
li in. ii. col. 7 in. xi. col. 7 c. 7 in. l. iii. ff. ad. l.  
aquilam uide. d. abb. in. c. suscepimus de ho-  
mici. 7. d. abb. in. c. i. de uita 7 bo. clericor  
in. ii. col. bar. in. l. i. in. ii. col. C. unde ui.

### Cap. cv.

Secundo queritur An p reb' in  
iuste possessis hoc liceat glo. in. l.  
i. C. unde ui hoc tractat 7 uidet  
q' non ē p trario sensu illius tex.  
q' est ualidum argumentum. l. i. §. huius rei  
de off. eius 7. c. uep de conuersi. coniugis 7  
c. hospicioium xxii. disti. In contrarium  
uidet p tex. li. i. §. qui ui. ff. de ui 7 ui arma.  
7. l. cum fundam. c. ti. 7. l. si cum exceptione  
§. pedius. ff. q' me. ca. Solo p hac legi appa-  
renti contrarietate glo. in dicta. l. i. dat plu-  
res soloes. Prima q' ibi subaudit maxime 7  
tunc cesset contrarium quia etiam pro uiciola  
possessione licet. Secundo q' iungatur pncipi-  
um. l. cum si. ut dicat rōe licet. Sed tunc  
obstat q' dicit lex in medio sine uicio. Tercio  
q' iuste possideri semper licet Sed ultio



possidenti non licet semper. Nam si dominus incontinenti ueniat non licet uicioso possessori sibi resistere ut. l. iii. §. cum igitur. ff. de ui et ui arma. Quarto exponendo ratione. l. non ui nō clam nō precario. et hoc nō placet glo. Sed in de. r. sequitur etiam quantum ad eum qui uult propulsare ut si uolentia inferatur ab eo a quo uicioso possidet. licet in continenti nō autem ex intervallo. Si autem ab alio uicioso possideat tunc quandoque liceat et hoc est quod dicit tex. q. aduersus extraneos uiciosa possessio prodest. ff. si serui uen. l. lo ci corpūs. §. competit. hic uidetur sentire in eo. clamdestinum possessorem licitus sit mihi appellare si a me clam possideat q. clamdestina possessio est uiciosa ut. ff. de acquiren. poss. l. cum quis. Probat op. facit. l. si se rursus ff. et cum eo. hanc op. uidetur sentire glossa. ff. uti. poss. l. i. §. interdictus. In medio magne igitur nec tamen uolo. Dy ibi tenetur contrarium. cuius lege hoc reperitur tantum q. clamdestinum possessorem liceat mihi expellere. Primo dicit lex uim ui repellere liceat Sed qui clam ingreditur nō infert uim cum differat clamdestinus clamdestia et uolentia ut. l. clam possidere. §. ad nudos ff. de acquiren. poss. In precario autem possessore procederet et procedere posset opinio. in. post. negatam restitutionem. Nam tunc enim uidetur spoliare dominum ut no. in. l. uicia. C. de acquiren. poss. In hac op. uarietate crederem secundum lo. glo. fore ueram. quam etiam sequitur pe. de bella petic. in dca l. i. eam tamen sic amplianda. Aut ergo uolens nim propulsare iuste possideo aut iniuste. Si iuste. Aut uolo in continenti et cum modamine inculpate tutele et possum ut dicta. l. i. §. uim ui. ff. de ui et ui arma. Aut ex intervallo et tunc non possum ut in. §. si quis uitem v. et igitur de ui et ui arma. Secundo scilicet iniuste possideo. Aut possideo iuste a te contra quem uolo uim propulsare. aut ab alio si a te. tunc aut ui aut precario aut clam. si ui tunc aut statim uenis ut recuperes et non licet mihi resistere et sic intelligatur. i. prima a contrario sensu. Unde ui et ui lege prima. Et iste est vñs et rectus intellectus illius si bene pōderet una cū allegatis in contrariū Sin autem uenis ex intervallo non licet recuperare auctoritate propria immo incidere in penam. l. si quis in tantum. C. unde ui. Et intellige ex intervallo ut no. glo. ff. de ui et ui arma. l. iii. §. cum igitur. Sin autem nō possideo ui sed precario tunc post negatam restitutionem licitum est tibi in continenti uim ui repellere nec licet mihi resistere. Nam negando ui. teor spoliare ut. l. uicia. C. de acq. rē. p. Et tunc procedit q. uim ui repellere liceat ante autem negatam nō procederet. licet posset renouare precarium ut. l. cum precarium ff. de precaria. Sin autem possideo clamdestine a te. et tunc quicquid dicat

glo. in. l. i. C. unde ui. Credo tamen dyno. q. non sit licitum tibi me repellere sed licet tibi ingredi. et si te nō admiseris et tunc sit uolentia ut. l. clam. §. qui ad nundinas. ff. de acquirere. poss. et tunc procederet q. uim ui repellere licet. Sin autem non possideo uiciosa a te sed a tercio. tunc licet mihi contra te quandoque uolentem mihi uolentiam inferre uim ui repellere ut. l. fulcinus. §. q. si aduersus. ff. ex qui. ca. in. poss. ea. Hoc dixi saluo iudicio et tot et tantorum super hoc dubio disputantium subicendo dicto quoruicunque correctionibus ueritatem inquirentibus. Tu pondera ea que predicat bar. in. l. i. C. unde ui et alii doc. ibi nituntur aliquid exprimere.

### Capit. cxi.

Terio queritur tūm ui repellere circa res suas. Si cōtingat uim repellentem occidere uel mutilare uim inferentem euitet penam irregularitatis. Et primo ubi hoc faciat cum modamine inculpate tutele q. questio pcedat al non pcederet questio. Et uidetur q. euitet. Nam p. defensa persone euitat et penam illam et alios et in clem. si furiosus de homi. ergo pro defensa reru probatur p. q. n. t. Nam iura p. mittentia uim ui repellere parsi cant personam rebus quia utroq. casu licet ut. l. i. C. unde ui et l. i. §. uim ui. ff. de ui et ui arma. et l. sciz. §. q. cū alr. ff. ad l. ag. In p. r. i. u. facit dca clem. si furiosus d. homici. Nam ibi textus stricte loquitur de occasione uel mutilatione occisoris sui. Et hanc credo ueram et moueo ex hoc. nam irregularitatem contrahit quis occidendo uel mutilando si si dolo ut patet in iudice li. di. de bñ. ac. sicut dignum de homici. et ca. sententiam ne cle. l. mo. et ca. in archiepiscopatu de rap. Qui ergo occidens qualitercunque irregularis efficitur nisi in casibus exceptis a iure cū igitur excipiat casus defen. intelligere debemus illum casum stricte et modificate ut ius excipitur ut sit ius ex orbitans. Et sic stricte intelligendum ut regula que a iure de regu. iuris li. vi. Pondera ea que dixi do. abb. in ca. olim de resti. spoli. in xi. col. in fi.

### Capit. cxlii.

Quarto queritur an p. rebus suis uim ui repellendo contra clericum incidat in excommunicationem manus iniciende apparz q. sic per can. si quis suadente xvi. q. iiii. et canon. nuper. cum ibi no. de senten. excommunicata.

Confirmatur nam incidit penam irregularitatis ut supra proxima questione. ergo et hanc cum ambe sint pene spirituales et facilius quis incidat excommunicationem q. irregularitatem ut claret So. Anno. in ca. oliz

de resti. spo. tenet q non incidat excomuni-  
cationem uim ui repellendo si al manus non  
iniciendo. Nam possit uim ui repellere 7 hoc  
facit cum moderamine inculpate tutele. hanc  
opinionem credo ueram 7 moueo qz ut qd  
incidat in excommunicationem per manus in-  
iunctionem in clericum uiolentiam debet sub-  
esse diabolica inspiratio probat tex. insuaden-  
te diabolo 7 vii. q. iiii. Et si bene discurras  
per iura insignentia penam excommunicationis  
propter manum in iectam non inuenies q ma-  
nus in iecta in clericu hoc casu aliq d maib?  
ex qb? iura exprimunt sic puniendo. na iura pu-  
niant manum uiolentiam ut dicto. c. si qd sua-  
dente. xvii. q. iiii. 7 desen. exco. per totu hec  
non est talis ymmo est uolentie repulsoria pu-  
niena temerariam ut in. c. contingit d fen.  
exco. hic non est talis ymmo districta lege  
permittente puniunt quasi uiolentiam manus  
ut. c. nup. e. ti. hec est uera manus 7 pmissa  
puniunt uocem. ut. c. uniuersitatis 7 cu man-  
dantur pcuri 7. c. quis. e. ti. li. vi. puniunt a-  
nimum ut. dicto. c. cum quis ut cum ratum  
habet suo nomine factum puniunt neglectus  
ut ca. quante eode titulo. hic nihil de predic-  
tis. Ad allegata in contrarium facile e re-  
spondere ad capitulum si quis suadente est re-  
sponsum per supra dicta ad id quod dicitur de ir-  
regularitate clara est ratio differentie. Na  
excommunicationem nemo incidit siue dolo ir-  
regularitatem sic de quo dicit ut no. glo. i. ele-  
men. si furiosus sepius allegata in penultima  
glo. Pondera q dixit abb. in ca. si uero d  
senten. excomuni. in si. unde plene per domi-  
num abban ca. olim de resti. spoli. i. xii. col.

#### Capitulum c. viii.

Quinto queritur an licitum sit q  
repellere uolentie circa res ad  
uocare amicos 7 cis licitum sit  
subsidium impendere glo. in. l. iiii.  
§. cam igitur. si. de ui 7 ui arma. notat q sic  
etiam illicita uolentia in rebus 7 hanc credo  
ueram 7 moueo nam ut dicunt iura licitum  
est obuiare erroribus ubi obuiare potest al? no ob-  
uians pferre uidetur lxxvii. di. error. 7. c.  
qui sentit cum si. ergo licitum amicus i hoc  
inuenire proximu sui ut. d. dictu est quia hoc  
prouenit ex radice caritatis ut casu. primos  
de pe. di. ii. Et si hoc licitum e statim soluitur  
qd qd qn possit incidat in exco. manu iniciens  
in clericu sic uolentia pro pulsando pro reb?  
proximi quia non incidit cum no sit aliqua  
de punitis a canone ymmo e permissa.

#### Capitulum c. viii.

Sexto queritur An pro rebus sit  
licitum contra omnes uim ui re-  
pellere ptra quos licitum est pro  
persona. Solutio q sic in perso-

nas que ualent habere bona ut excludam fuos  
monachos. i. similes fatcos tamen q modera-  
mine tutele diuersificari debet attenda uaria  
psone qualitate. Nam al. 7 militas ptra ptem  
q penitus exneum 7 sic de singulis que p-  
beanda ueniret inspectis singulis circums-  
tantiis cum non sint hoc iure limitata ut. l. i. ad  
fl. d. iure delibe 7. c. v. causa d offi. delega.

#### Capitulum c. ix.

Septimo queritur An pro rebus  
depositis 7 comodatis sit licitum  
uim ui repellere 7 uidetur q no  
p. l. i. C. unde ui que loquitur de  
possessio 7 iuste ac hec non possidentur p de-  
positarium uel commodatarium ergo non licet  
in his uim ui repellere. Solum in his 7 sitibus  
uendicat sibi locum q licet uim ui repellere  
Nam p talibus iudicium ui bono. raptoru ppe-  
tit depositario uel commodatario si hec sint  
rapta ut. l. pectoris ait Que est tertia lex. §.  
in hac actione. ff. ui bo. raptoru ergo multo  
magis ipsis conceditur tutele ut. l. inult. §.  
cui dam? ff. de reg. iuris. 7. l. una. ff. de fonte  
7 regula quid ad agendum de reg. iur. li. vi.  
Etiam quia isti tenentur ergo non obstat. l.  
i. C. unde ui quia licet loquatur in possessione  
non tollitur tamen quo minus in aliis decen-  
tatis p quibus iura decedantibus actiones  
pcedunt ut. d. Uel dic q vbum possidere  
sumitur large ut implicet iustas detentatione  
ut. l. officii d rei uen. 7 no in ca. pastoralis d  
ca poss. 7 propria.

#### Capitulum c. xi.

Septimo queritur An pro rebus  
tutele uidelicet qualiter uim ui re-  
pellere tamen cum moderamine  
inculpate tutele 7 huic respodet  
tex. in. l. i. C. unde ui q licet cum modera-  
mine inculpate tutele 7 huic rident tex. in. l.  
i. C. unde ui q licet moderamine inculpate  
tutele sed reuocatur in dubium quid uelint  
hec vba hoc est que sint illa que requirunt ad  
hoc moderamen doc. comiter dicunt q sunt  
illa que equivalent illate uolentie in qualita-  
te armorum 7 concursu temporis. Item eg-  
ualent in ipso actu uolento ne alias exten-  
denda censentur uindicta.

#### Capitulum c. xii.

Ad circa hec dubitatur an licet  
vili 7 debili cum ense se defende-  
re contra fortem 7 robustum pu-  
to tantummodo penitentem. uidet  
q sic quia equalitas ubiq est ponderanda ut  
l. si. C. de fruc. 7 lit. expen. 7. l. i. si cu dies. ff.  
de arb. 7 regula in iudiciis li. vi. In contra-  
riam uidetur. Na si quis uolenter mult mibi



subripe et ego uiribus corporis impar ipsum percussio cum ense non impune licet. Nam fieret compensatio corporis ad rem quod esse non debet ut. l. ultima. C. de sac. sanc. eccle. Ja. de are. distinguit aut quis uult propellere uolentiam illatam persone aut illataz rebz. Primo casu licet et cum armis et qualitercunq; si res aliter reparari non potest ut. l. si quos. C. de appell. Nam si possum occidere furem ubi non cognosco quod possit mihi in rebus furatis per iudicem prouideri ut. l. fure. ff. ad. l. cor. de sicca. Multo magis licet occidere ubi persona aliter salua esse non possit. Secundo casu quando illata est rebus tunc aut uolentia rebus illata potest per uiam iudicii reparari tunc non licet quascunq; ymmo cum qualitate armorum non autem factorum quia non debeo personam percutere pro uolentia facta in re pro defensione rei ubi etiam aliter salua esse non posset dummodo per uiam iudicii reparari possit. Sin autem per iudicem non potest reparari tunc licet qualitercunq; defendere etiam personam occidere ut. l. fure. ff. ad. l. cor. de sicca. Et sic intelligitur. l. una. C. unde ui. et. l. iii. §. cum igitur. ff. de ui. et. ui. arm. Sic igitur intellige moderamine inculpate tutele ex qualitate armorum et factorum.

### Capl. cxiii.

Secundo queritur Circa primum temporis quia dicunt tex. quod de fieri incontinenti. Quero quando intelligat incontinenti. Solo aliqui dicant si ante fiat illata iniuria tunc debet iudicem adire. Alii dicunt in continenti fieri. etiam si fiat post antequam diuertat ad extraneos actus ut. l. qui ait in si. ff. de ad. ulte. Ja. et pe. distinguit Aut loquimur de uolentia illata persone. et tunc dicitur repelli in continenti si fiat in ipsa fragrantia facti sic intelligit. l. scias. §. qui cum alio. ff. ad. l. acq. et. l. ut ui. ff. de iusti. et. ui. at loquimur de uolentia illata rebus et tunc dicitur incontinenti repelli etiam post fragrantiam facti dum non diuertat ad extraneos actus. ff. de ui. et. ui. arma. l. qui possessionem et. l. iii. §. cum igitur. et. ti. Ratio diuersitatis est. Nam illata iniuria persone non potest amplius restaurari sed res ab illata recuperari potest et sic non facta diuisione ad actus extraneos etiam si amicos querat et redeat ut recuperet dicitur incontinenti ut no. glo. in dicta. l. iii. §. cum igitur de ui. et. ui. ar. Sic intellige moderamine in concursu temporis.

### Capl. cxiiii.

Terco queritur de moderamine in equalencia in actu uolento uidelicet quod fieri debet ad defensionem non autem ad uindictas

licet uarie scribatur totum hoc ponderari debet in spectis conditionibus personarum aut uindicasse uideo non defendisse.

### Capl. m. cxv.

Quarto queritur quis expulit me de possessione et post expulsionem patus est satisfacere de restituenda si appareat ipsum iniuste fecisse sed nihilominus ipsum expello nunquid uideo se cisse ad uindictam glo. tenet quod sic in. l. i. C. unde vi. Sed contra glo. reprobat. Nam non debuit se committere illi fragili cautione sed ad trebel. l. quia poterat et. l. non quod cum sy.

### Capl. m. cxvi.

Quinto queritur. Nunquid si uideo aliquem paratum ad percussum me. An debeam expectare quod me percutiat an debeam preuenire. glo. in dicta. l. i. arguit per contra et determinat quod non debeam expectare. De. dicit glo. intelligendam habita distinctione personarum. Nam aliqui sunt audaces et prompti ad percussendum et tales non sunt expectandi. Aliqui timidi et tales non sunt statim preueniendi et sic modificat glo. ar. l. i. C. Si quis impa. maledixerit.

### Cap. c. cxvii.

Exto queritur quidam egregius miles est aggressus a uicino suo et euadere posset fugiendo. tamen reputans sibi ad uituperium expectat et resistit et percussit nunquid censetur nimis ui repellere apparet quod non per. l. licentiam. §. qui cum alio. Moderni doct. tenent contrarium per. l. eadem. ff. ex quib. ca. ma. Nec obstat. §. qui cum alio quod non poterat euadere sine periculo fame sue et honoris sui que non possunt per iudicem reparari ut. l. iul. ff. si quis omni. ca. testi.

### Capl. m. cxviii.

Sextimo queritur Quidam uulneratus post uulnera in sequitur uulnerantem et ipsum percussit quod non licet ut. l. si ex plagis. §. i. et. l. qua actione. §. in colluctatione. ff. ad. l. aquil. nunquid punietur ut dolosus aut culpabilis. Quidam dicunt quod culpabilis quod in consultus calor uicio calumpnie caret ff. ad tur. l. i. §. queri. ff. ad. l. cor. de sicca. l. iii. §. cum quidam. ff. de penis. l. respiciendi §. de linquant. Alii dicunt quod ut. dolosus cum se uindicare animo debuerit. Ja. de are. dicit primam opinionem uianorem. ff. de penis l. interpretationem. ff. de reg. iur. l. in totum

secundum rigiditatem. C. de iniuriis. si non est  
uicti. Credo primum uictorem etiam de iure  
per iura prius allegata.

Capitulum c. xviii.

Cum queritur nunquid uolenta illata persone possit per amicos propulsari sicut illata rebus ut no. glo. in. §. cum igitur glo. in. l. i. C. unde ut. dicitur quod non per. l. cum fundum. ff. de ui. et ui. ar. Alii distinguunt autem amici erant in comitiis uolentiam passi. aut non. primo casu licet per. l. Item per laborem. §. si quis uirginem. ff. de iniuriis. Secundo casu non licet. Ita. de are. tenet indistincte quod sic si negotia nostra possant per alios iniuriari ut. l. i. C. de neg. gest. Multo magis per sona que rebus prefertur ut. l. sanctus in fi. C. de sacro sac. ecc. probare uidetur text. in l. gnaeus. C. ad. l. iul. adult. Non obstat. l. cum fundum quia ibi mandabatur ex iteruallo quod non liceret in principali. huic opi. obstat. l. ut uim ubi dicitur quod obtulit sui corporis et de. si furiosus de homici. Unde ratio text. in dicta. l. Item apud laborem. §. tenere sancta glo. de iniuriis unde bal. in. l. ut uim. ff. de iusti. et iure. unde textus cum glo. in. c. dilecto de sen. excomuni. li. vi. de quo textu facit festus baldus in ti. de pace tenenda.

Capitulum c. xx.

Quo queritur pone quidam mandauit seruienti suo quod uxorem suam quam habebat suspectam de adulterio occideret uel ipsam occideret. Seruiens interfecit. nunquid excusatur uidetur quod non. nam potius debet omnia mala pati quam mala consentire ut. l. isti quid in fi. ff. quod me. causa uidetur textum in lege scientiam. §. qui cum aliter. ff. ad. l. agl. In contrarium facit. l. ut uim. ff. de iusti. et iure Nam hoc fecit ad tutelam sui corporis ergo. Iaco. de ra. distinguit autem mulier erat alio pitura aut non ut. l. si quis seruum. ff. ad. l. agl. et. l. si alii. §. est et alia. ff. quod ui. aut clam. De. tenet indistincte seruientes excusari quod fecit ob tutelam ut. l. ut uim etiam quia caritas incipit a seipso ut. l. pates. C. de fui. et aqua. Item quia licet proprium sanguinem redimere ut. l. transigere. C. de transac. Ego crederem distinguendum an seruienti incumberet necessario mortis propter periculum nisi uxor mandantis interficeret et tunc credere oportet. ueram. aut erat aliquis spes salutis etiam domino resistendo. et tunc tunc contrarium crederem per iura supra allegata. Tu pondera etiam que dixit bar. in lege ut uim. ff. de iusticia et iure in penult. col.

Capitulum c. xxi.

Ita ultimum principaliter questum est quis sit finis huius belli Quoniam huius loco patet per. §. de. etiam non conseruatio sui ipsius et bonorum est finis huius libelli et hoc finaliter tendit et propter hoc est promissum clara patet per supra dicta.

TRACTATUS. REPREHENSALIS.

Capitulum c. xlii.

Equitur uidere de quinto tractatu tertii principalis scilicet de particulari bello quod sit ad defensionem corporis militum et quod repressale nuncupant Circa quod uidendum est Unde et a quo ortum habuerunt repressale et propter quid insurrexerunt.

Capitulum c. xlii.

Optando aliquoties questus et materiam repressalium promittam fundamentum propter quod insurrexerunt repressalie quo premissis examinabo exiam. Ecce altissimus creator a principio creauit celum et terram et mare et que in eis sunt nec non angelicam et humanam naturam spiritualia et temporalia et ipsa per seipsam rexit et homini quem creauit precepta dedit et transgredienti penam imposuit. Item. ii. c. Qualiter autem per seipsum rexit apparet. Nam per se ipsum et non per ministrum delicta puniebat. Nam chaim et lamech et quodam alios reges puniuit ut legitur Genes. iii. c. et quinto. Et hec mundi gubernatio precessit usque ad tempora Noe. Al tempore autem Noe cepit mundum regere per ministros quorum primus fuit noe de quo quod fuerit rector populi apparet. Nam dominus commisit sibi administrationem et gubernationem arce Babel. vi. et vi. c. Et per archam significatur ecclesia et qualiter dominus noe et filius commisit gubernationem legitur Genes. ix. capitulo et licet noe sacerdos non fuerit legitur tamen officium sacerdotis exercuisse antequam leges populo darentur Genes. viii. cap. In hac autem gubernatione et uicarie successerunt Patriarche Reges et Iudices qui fuerunt pro tempore in regimine populi Iudeorum et illa durauit usque ad Christum qui fuit naturalis dominus et rex noster de quo legitur in psalmo. Deus iudicium tuum regi da. Ipse autem Christus duo luminaria dimisit in terris luminare diurnum et nocturnum scilicet summum pontificem luminare minus et nocturnum scilicet romanorum principes quibus commisit administrationem et gubernationem mundi uni in spiritualibus et alii in temporalibus. Tempore primitiuo quo dominus per seipsum gubernabat non fuit opus repressalis. Cum per dominum iusticia exhiberetur. Tempore noe et successorum non fuit opus repressalis cum per ministros iusticia exhiberetur et subditi de populo recognoscerent superiorem cui obtemperabant Tempore precedentium summorum pontificum et imperatorum romanorum cum omnes subleuantur et de iure et de facto non erat opus repressalis cum per principes iuris ordine ler



unto iusticie complementum exhiberetur.

Postq̄ aut̄ inperliū paulisper cepit exinaniri adeo q̄ nūc sit q̄ de facto nullū recognoscūt supiorem ⁊ p̄ eos iusticia negligit idcirco fuit op̄ subsidiazio ī medio deficientib⁹ ordinariis quib⁹ extantibus ad illud nullaten⁹ recurrendum. ff. de mino. l. in causis. ff. de oper. noui. nunci. l. in provinciali. Istud autem remedium extraordinarium habuit ortum ex iuregentium. Nam est quedam species belli liciti. Nam licitum est obtutelā corporis sui arma monere. ff. de iusti. ⁊ iure. l. ut uim. l. i. C. unde ui. ca. olim de restit. spoli. Et ne dum corporis sui priuati ⁊ individualis sed etiaz mīfici. Nam mīnisteritas est unū corpus cuius partes sunt singuli de uīuersitate. ff. q̄ glq̄ uīuersitatis nomine. l. i. ⁊ sic uīuersitati licitum est defendere partes sui corporis.

Habuit etiam ortum a iure diuino ut legitur xxvi. q. ii. dominus noster. Expeditis omnibus inferitur propter quid insurrexerit hoc remedium. Nam similiter ut iusticia debitum sortiretur effectum occasionaliter propter defectum remedii insurgentis a neglectu gubernantium ⁊ regentium populos carencia recognitionis superiorum de facto quo tempore fuerit opus hoc extraordinario remedio. Ex quo inferitur q̄ etiam hodie raro hoc remedium locum sibi uendicat. naz negligente iudice seculari recursus habend⁹ ē ad ecclesiasticū de fore competentī ex tenore ⁊ ca. licet ⁊ capitulo ex parte qui filii sint leg. na. per uenerabilem licet etiam de facto male optemetur. Quibus prediscussis restat examinandi que sunt cure repesalioꝝ.

Tu pondera q̄ ea que hic narrantur per pronum meum fuerunt predicta ad aliud p̄positum supra in ca. Redeo ad primum ⁊ primo quero x. Pondera rationem propter quam remedium repesaliorum sint nobilitatum quam allegat etiam bar. in tractatu repesaliorum in principio.

### Capitulum c. xxiii.

De sit causa productina que materialis que formalis que finalis  
Cidendum est etiam de quibusdam questionibus circa hoc occurrentibus.

Ad primum que sit causa productina repesalioꝝ hec est quare quib⁹ possit indicare repesalias hic attendendum est q̄ ut supra dictum est nulla lege positua canonica nec ciuili disponitur repesalias indicere. nam utraq̄ lege disponitur modus consequendi effectus iusticie. ymmo lege inbibitum occupare rem propriam. C. unde nulli si quis intantam ⁊ l. exstat. ff. que met. ca. ymmo etiam hoc expresse inbibetur lege ciuili ⁊ canonica ut in aut. ut si fiat pig. ⁊ c. uno de iniuriis li. vi. Sed deficientibus iure possitui remedio ad hoc fuit habendus recursus

ne fiat belli indicione q̄ desperat iusticia hec autem belli indicio spectat ad illum solus qui supiores non habet ut. l. hostes. ff. de captiuis Nam habens superiorem auctoritate propria non potest uiolare iuris remedia. Ille ergo in dicere potest qui superiorem non habet d̄ iur̄ nec de facto. Expedi etiam q̄ ille cōtra quem inducuntur non habeat superiorem ul̄ si habeat negligat iusticiam facere. Ex quo q̄dam inferunt q̄ potestas ciuitatis qui non recognoscit superiorem de facto non possit indicare nisi specialiter habeat in mandatis. Sed haberi debet recursus ad uīuersitateꝝ apud quam est plenas ius ⁊ eius auctoritate inducitur. Istud non credo uerum ubi uīuersitas transtulerit omnimodam potestatem in rectorem. Nam tunc potest totum q̄ uīuersitas sicut dicimus in habente generalem cum libera ut. l. p̄curator qui. ff. de p̄cur. Secus si limitatur. Inferret etia q̄ si comes marchio uel similes subditus est principi q̄ si ne principis auctoritate iudici non potuerit ar. predictae regule quam tradidit in. c. olim de restit. spoli. ⁊ hec p̄cedit loquendo d̄ iur̄ cōmuni. Nam si loquamur fm̄ dispositionem iurium municipalium fm̄ quem conceditur facultas indicendi repesalias. Illi indicare poterunt quibus a lege municipali concedit. Et hec ut dixi. conceduntur p̄pter urgentem necessitatem sicut aliquando propter necessitatem concedit ius ciuili facultateꝝ alicui sibi ius dicendi. ff. de his que in frau. cre. l. ait p̄tor. §. si debitorem. ff. q̄ ui aut clay. l. alius. §. bellissime. Ex predictis inferri potest duorum iure petatur indicio repesalias. Nam si uigore statutorum concedantur condit. ex. l. hoc petitur. ff. de condit. ex lege una. Sin autem loquamur fm̄ dispositionem iuris cōmunis dicunt quidam q̄ nec actio nec officium intentatur ratio. Nam solo iuregentium hec facultas conceditur quousu re omnia expediebantur via regia. ff. de origine iuris. l. ii. in principio. Sic dicunt hodie rep̄ti manu regiam fm̄ statuta diuina ut iur̄. gen. Sed non credo uerū. Naz licet facultas non sit nisi seruetur modus traditus. Quia primo debet recurri ad remedia ordinaria quibus deficientibus ad hoc recurratur ⁊ hoc constare debet iudici requisito an q̄ indicat repesalias. Et si ille contra que petuntur monitus comparuerit auditus ⁊ de sensus ut. j. dicet ⁊ legi tenet etia q̄ p̄nuat indicendas uel non nihilominus fuit opus actione uel officio. Nam secundum modum petitionis formari debet sententia ut. l. ut fundo. ff. comuni diui ⁊ ca. licet hely de symo. Confirmatur nam licet de iuregentium hec facultas processit tamen iure ciuili approbata ē ex mente ipsius licz non uerbis exp̄ssis Nam est ex mente iuris ciuili ymmo etiam ex uerbis q̄ contra rebelles ⁊ inobedientes iur̄ p̄cedant manu militari ut. l. qui restitue

re. ff. de rei uen. Et sic pñctū est remediū.  
implorationis officii ut ad hanc manu millio  
ri recurrat remediis oportunitas deficientibus

Dondera an lege ciuili uel canonica fiat li  
cite repñalie unde bar. in tractatu repñaliar  
ubi ponit etiam an in foro conscientie sint li  
cite repñalie 7 hoc in prima questione princ  
pali uide Jo. an. in regu. non debet aliquis 8  
reg. iuris li. vi. tractantem an in foro conscie  
ille cui concedit repñalie tenent. nā reg.  
repñalie sunt contra ius diuinum canonicū  
7 ciuile ut refert ange. in consilio suo. quod  
incipit ex thomate. uide que dixit bar. in l.  
nullus. C. de iudeis 7 bal. in l. ex hoc iure. ff.  
de iusti. 7 iure sed conceduntur eo casu quo  
quia non reperit iusticiam apud dominū illi  
ciuitatis contra quam petuntur secundum  
doc. locis superius allegatis. uide bal. 7 bar.  
in aut. 7 ideo. C. ne uxor pro marito circa pri  
cipium. uide ea que no. glo. 7 doc. in ca. l. de  
iniuriis li. vi. uide bar. in l. general. C. de re  
ca. li. x. 7 bar. in l. si. C. de nauticariis li. xi  
bar. in l. pro herede. §. si. de acquir. hered.

#### Cap. c. xxv.

Estat examinare causam mate  
rialem de materiali autem causa  
est dicendum uel uidendum de  
materia in qua. de materia circa  
quam. de materia contra quam que est obiec  
tum de materia ex qua. Materia ex qua  
est causa ex qua hec facultas conceditur.

Materia in qua est persona uel suppositū  
cui facultas conceditur. Materia circa  
quam sunt res circa quas facultas hec conce  
ditur. Materia contra quā siue obiectus  
est suppositum contra quod conceditur ut  
puta ciuitas uel alia uniuersitas. Respon  
deo ad examinationem. Et primo querit qui  
bus conceditur. Et propter rationem superi  
us tactā. q. ut ciues mystici corporis. ciuitatis  
ut. l. i. ff. q. cuiusq. uniuersi hinc appellati ē  
ciuitas quasi ciuium unitas ut no. in ca. si ci  
uitas de senten. excomuni. li. vi. Et supra de  
ductum licitum ut cuilibet defendere corp  
sui ut. l. ut uim. ff. de iusti. 7 iure 7. l. i. C. ut  
ui. Et hoc procedit in cor pore individuali q  
mystico. Primo quero an incolis concedi  
debeant. Quidam hic distinguit an incole  
subeant onera 7 tunc concedi debeant. an si  
subeant 7 tunc concedi nō debeant. Ratio  
secundi membri nam quo non sentit. cuius  
nec cōmodum sentire ut. l. manifestissim. §.  
sed cum in secunda. C. de fur. regula secūda  
naturam de reg. iur. 7 regula qui sentit li. vi  
probat per. l. qui sub pñctu. C. de epis. 7  
cle. 7. l. i. C. de colleg. illi. li. xii. Probat  
nam non habet quis privilegia dignitatis ni  
si re ipsa gesserit. C. de consul. l. neminem li.  
duodecimo. ff. de excu. tu. l. sed 7 miles. §.  
quoniam. C. de testa. mili. l. pe. Tunc opt.

non puto sam indistincte ymmo puto distin  
guendum sic aut incola non subit propter ei  
contumaciam quia requisitus non uult subit  
ut tenetur. Nam inter ciuitatem recipientē  
quem ad incolatum 7 ipsum incolam tacite  
oritur quidam contractus ultro citroq. obli  
gatorius quo incola tenetur subire onera. ff.  
ad municip. l. i. 7. l. incola 7 ciuitas tenetur  
ad eius ptectionem ut. l. illicitas. §. ne potē  
tiores. ff. de officio presidis. Et hoc casu si de  
negat adimplere contractū p parte sua nec  
ciuitas tenetur ipsum defendere nec ille hoc  
petere potest ut. l. iul. §. offerri. ff. de actioni  
empti. Aut incola non subit onera quia si  
p hoc privilegium a ciuitate que opus remit  
tere potuit ut. l. si quis in conscribendo de  
pactis 7 de epi. 7 de l. a principe 7 tunc in  
cole concedi debent. Nam privilegia cōcessa  
in eorum fauorem redundare non debent in  
eorum lesionem. C. de legi. l. quod fauore re  
gula q. grām. li. vi. Et hec intelligas de pri  
uilegiato post assumptionem. Tu pondera  
quod dixit bar. in tractatu repñaliarum in  
scōa questione principali bal. in aut. 7 ideo  
in vi. col. C. ne uxor pro marito.

#### Capitulum c. xxvi.

Secundo quero an ciuibus nō sub  
iectis iurisdicōi ciuitatis 7 al  
non facientibus factōes sint con  
cedē de repñalie. Quidā distig  
unt. Aut non sunt subeantes subiecti ex pri  
uilegio ut c. i. ut. l. ii. 7 aut. statum. C. de  
epi. 7 cle. Aut propter dignitatem seculares  
ut. l. i. C. ubi sena. uel clari. ff. de uaca. mu.  
per totum 7 talibus sint concedende. Aut si  
subeant ppter contumaciam 7 tunc non. Rō  
primi est ne redundet in eius lesionem quod  
in fauorem concessum est Et quia in ciuibus  
ex natiuitate pficitur obligatio inter ipsos 7  
ciuitatem que non potest mutari. ff. ad muni  
cipal. l. assumptio lecas in incola quia incola  
tus non perficitur nisi per receptionem ut. l.  
i. ff. ad municipal. Ratio secundi est propter  
contumaciam suam. ff. ex qui. ca. ma. l. sed 7  
si p emptorem. §. sed si dum. Tu pondera  
que dixit bar. in tractatu repñaliarum in  
v. questione principali.

#### Capitulum c. xxvii.

Ercio queritur an chi per con  
uentionem concedantur repe  
saliē contra ciuitatem originis.  
apparet q. non. nā ubi ex aliquo  
facto tus maxī queritur si illud fuit meum nō  
obligo ut. l. sed 7 si quis. §. 7 generaliter. ff.  
de usufruc. lega. Sed si fiat in iuris huius cul  
Ciuitati originis queritur ius indicendi rep  
salias ergo contra eam non competit  
Confirmatur quia ciuitas originis pñetur



ut. l. assumptio. ff. ad municip. Confirmat  
Nam ciuitas originis poterat in subditis suis  
statuere anteq̃ efficeretur ciuis alteri per  
conventionem nec ciuitas per cōventionem  
potest conquiri. Confirmatur a simili usu  
fructuarii qui nūciare potest noui op̃ oib̃  
p̃ter q̃ domo ut. l. i. in fi. ff. de ope. no. mici.

Confirmatur a simili nam habens publicia  
nam illam intentat contra omnes p̃ter q̃  
contra dominum ut. ff. de publi. l. penultima  
probat tex. in. l. de iure. ff. ad municipi. Na 3 d̃  
his que aguntur inter ciues 7 ciuitatem solū  
coram iudice illius ciuitatis agi debet.

Confirmatur nam remedium extraordinariū  
est ut supra probatum est. extra ordinaria au  
tem remedia dantur non filio contra patrem  
C. qui 7 aduersus quos. l. si. sed maior ē po  
testas ciuitatis in ciuem q̃ patris in filium. ff.  
de iusti. 7 iure. l. ii. 7 l. postliminiū. §. filius. ff.  
de castren. pecu. In contrarium p̃batur an  
si duo hnt eūdē subditi ut q̃ui defēder ad ṽ.  
iniurias q̃ ab alio inferret. Nā ciuitas punit  
p̃ter 3 offēdētē filium. ff. d̃ parci p̃ totū. Cōfir  
mat. Nam si duo habēt ius in re licet unum  
ius sit debilius alio tamen habens ius debilius  
agit contra habentem ius potentius si d̃ p̃pi  
ficat rem in qua concurrunt illa duo iura. ff.  
ad. l. aquil. l. Item mella. §. si. l. si dominus  
seruum. c. ti. Cōfirmatur. Nam si duo sūt  
domini eiusdem serui si unus in eum delin  
git potest per alium cohereri. ff. ad. l. aquil. l. i.  
Confirmatur. Nam p̃ iniuria repellēda l̃  
conuocare amicos. ff. de vi 7 vi ar. l. i. §. cu  
igitur 7 de homici. significasti de senten. ex  
cōi. delicto. Solutio. Quidā dicunt indistric  
te q̃ possint concedi 7 ratio est quia facultas  
iudicendi rep̃elias succedit in locū defici  
entis iurisdictionis. Sed si ciuitas offēdit  
ciuem licitum est superiorem adire ut. l. me  
tum. §. animaduertendum. ff. q̃ me. cā. ergo  
deficiente iurisdictione locus est rep̃eliaz  
probat per. l. sed si ex dolo. ff. de dolo.

Confirmatur na3 quilibet potestas censetur  
legittima potestas cum quis bene utitur nō  
autem cum spoliatur ut. l. ei cum qui fundus. §.  
tutor. ff. proempto. ff. de furt. l. interdi. §. q̃  
tutelam. Et sic dicit procedere hinc inde al  
legata. Ego non puto hanc conclusionem  
sic indistricte ueram. Sed puto distinguen  
dū an iniuria irrogata a ciuitate originis in  
surgit ex facto precedentē cōuentionē per  
quā effectus est cuius alterius ciuitatis. An  
insurgit ex post comisso. primo casu nō pos  
sint concedi rep̃elias per ciuitatem cōuen  
tionis. nam apparet q̃ sit pars corporis defē  
dendi tempore quo iusticiam patitur. Nam  
aliter ad nouam ciuitatem non transit hoc  
ius. ff. de seruo corrup. doli. §. si. ff. de positi.  
l. i. §. si seruus 7. Liquecūq̃. ff. de ac. 7 obli.  
Per quem inferitur q̃ facto cui p̃ comēti  
nem post iusticiam non debent concedi rep̃  
elias. Secundo casu procedit predicta solutio

Tu pondera que dixit bar. in tractatu re  
p̃eliaz in quinta questione principali i  
uersi. ad tercium queritur.

### Capitulum cxxviii.

Quarto queritur an ciuibz 7 ha  
bitis p̃ ciuibz limitate tñ. Ecce  
potestas ciuitatis quo ad quid ē  
ciuis ut. l. ciues. C. de incolis sti  
pendiarii etiam ubi merentur stipendium cō  
ueniuntur ut. l. municipes. §. si. ad municipi.  
Scolares etiam quo ad quid ut p̃tegantur a  
rektoribus ciuitatum ut in prima cōstit. fozz  
7 aut. habita. C. ne filius p̃ pa. nunquid tali  
bus rep̃elialis sunt concedende quidā di  
cunt q̃ his in quibus habentur p̃ ciuibz limi  
tate sunt concedende rep̃elias ut si scolari in  
iuria inspectantibus ad studium fiat 7 militi  
in spectantibus ad miliciam in aliis non repu  
tentur de corpore. Pondera que p̃dicant  
e bar. in tractatu rep̃eliaz in quinta q̃e  
principali in ṽsi. ad quintum queritur. 7c.

### Capitulum cxxviii.

Quinto queritur An si ex pacto  
uel statuto ciues huius ciuitatis  
tractari debeant ut ciues alteri  
us ciuitatis ipsis concedi debeāt  
rep̃elias per ciuitatem in qua tractari dñt  
ciues. Solō. Ponderanda sunt uerba legis  
7 statuti. Nam p̃ illa ṽba tractentur ut  
ciues non efficiuntur ciues ut. l. iuris appel  
latione. ff. d̃ ṽ. signi. Et ibi nō per ia. de are.  
Illa ergo uerba intelligantur ut tractentur  
in his que de iure cōmuni fieri debent ut. l.  
ei qui fundum. §. si tutor. ff. p̃ empto ita sol  
uunt quidam. Hanc conclusionem non cre  
do ueram ymmo credo ipsis iudici debere.  
Nam fateor q̃ per illa uerba non est effectus  
ciuis sed ei debentur que debentur ciui. Na3  
hoc p̃bant uerba a quibus recedi non debet  
nec eorum p̃prio significato. ff. qui. 7 a qui. l.  
prosperit. ff. de le. iii. l. non aliter 7. l. i. §. si  
is qui nauem. ff. de exercito. Sibi ergo con  
cedantur rep̃elias ut supra deductū est ergo  
Nec obstat quod dicitur q̃ sibi concedi de  
bent que de iure cōmuni cōpetunt Na3  
hoc remedium seruata debita forma non est  
iure cōmuni inhibitu. Tu pondera que di  
xit bar. in dicta rep̃eliaz in v. q. prin  
cipali in uersi. ad vi. queritur balān autē. 7  
ideo. C. ne uxor pro marito in vii. col. 3  
unum pondero quod nō tetigit proauus me  
us ṽ3 ei qui post q̃ passus est in iusticiam  
factus est ciuis sint rep̃elias concedende  
7 concluditur q̃ non. Nam est quoddā cor  
pus mixtum ut est una ciuitas 7 collegium q̃  
appellantur corpora ut habetur p̃ glo. in ru  
brica. ff. de colle. illici. unde ciuitas pro eo q̃  
est de corpore suo. dēiendū ab iniuriis po

test concedere reprefalias non autem pro eo quod est extra corpus suū. Juxta illud quid enim ad nos de his que foris sunt iudicare ea. gaudemus de duos. Ergo ei qui tempore denegate iusticie erat foris licet postea efficiatur ciuis non possunt de iure concedi reprefalie ar. i. l. i. §. si seru? ff. de positi. vide que dixit bar. in tractatu reprefaliarum in quinta. q. principali in ner. ad quartum q. ritur. Sed predicta limita nisi inferaretur in iusticia actu permanens puta si quis teneatur in rem suam. Nam tenere est actus continuus ideo ratione presentis in iusticia habet petendi reprefalias secundum bal. in auten. 7 ideo. C. ne uxor pro marito. Vide. l. si dominium. ff. de furtis 7c. Item pondera an homines confederati possint impetrare reprefalias: Nam si est sedus propter quod una ciuitas subest alteri quo ad protectionem 7 tunc idem iudicandum est quod de populo ciue. Et ideo possunt consequi reprefalias. vide b. in auten. 7 ideo. C. ne uxor pro marito. vide. l. non dubito. ff. de captiuis. q. quid ibi dixerit bar.

### Cap. c. xxx.

Estat uidere de materia circa q. conceditur hoc ē de rebus 7 ē claz. Nam in reb. mobilib. illonā contra quos conceduntur que reperte fuerunt in territorio ciuitatis concedentia. Sed circa hoc queri potest de pluribus. primo an contra reos eorum qui capi non possunt vigore reprefaliorum iudici possint reprefalie. Solutio si sint persone que capi non possunt propter inabilitatem iur gentem ratione etatis uel furoris uel consilium. tunc in eorum res exerceri poterunt reprefalie. ff. de ius. no. l. scis q. in aut. ut nulli iud. §. necessarium. Sin autem in personas exerceri non possunt propter quidam prerogatiuum eis a iure concessas ut sunt scolares 7 ambasciatores. tunc nec etiam contra res eorum quas deferunt necessarias pro studio uel ambasciata non poterunt exerceri. In aliis autem sic. ff. de publi. l. publican. Per hoc inferitur solutio alterius q. nōis Ecce ambasciator uel scolaris secum deferat res aliorum res aliorum. nūquid in illas exerceri poterunt reprefalie dic q. non si sunt res necessarie ut equi uel similia ut. l. cenforia. ff. de verb. sig. alio sic. Pondera ea que dixit bar. in tractatu reprefaliaz in viii. q. dē principali i. vñ. Ad primum queritur 7 in uersis secundum querit unde bal. in aut. 7 ideo ea. nō ux. pro ma. in octaua col.

### Cap. m. c. xxxi.

Secundo queritur an reprefalie simpliciter indite exerceri possunt contra bona existentia i territorio

rio ciuitatis cōtra quā sit iducte ut capient 7 reducat itra territorii ciuitatis iductis Quidam dicunt q. nō quia extra territorii 7c. ut. l. ex territorium. ff. de iure o. iudi. 7 l. cum unus. §. is cuius. ff. de bo. auct. iudi. poss. 7. c. ii. de cōsti. li. vi. Preterea ingreditur territorium alienum conceditur cā maioris tumultus ergo in dubio non uidetur concessum ut. l. non est singulis. ff. de reg. iuris.

Hanc conclusionem non credo ueram Nam propter defectum iurisdictionis recurritur ad manum regiam deficiente formula sollemniter dicendi. Et sic ubiq. hoc fieri potest quia ubiq. licitum est cuiuslibet defendere corpus suum ut. l. ut uim. ff. de iusti. 7 in re 7. l. i. C. unde ui etiam in simplici 7 generali concessione ubi operari debent generaliter ut pferuntur. ff. de le. pñ. l. i. §. generaliter. etiam contingeret reprefalias nihil opari ut si contra ciuitatem distantem cuius ciues nihil haberent nec ciues accederent in ciuitate indicente. Sic ergo intelligantur ut in omnem euentum aliquid opari possint. ff. de le. l. si quando. ff. de re. du. l. quotiens de reg. iur. l. quotiens. Pondera dicta per bar. in tractatu reprefaliaz in octaua questione principali in §. ad tertium queritur.

### Cap. m. c. xxxii.

Ertio queritur An si una ciuitas indicat reprefalias extra alias possit rectori ciuitatis indicenti scribendo rectori ciuitatis cōtra quam exercere reprefalias in res ibi sitas dicunt quidam q. licet si in executione siue hoc faciat ut. l. a dno pio. §. i. ff. de re iu. l. cum unus. §. i. ff. de bo. auct. iudi. poss. tamen hoc casu non est ratio. Nam indictio reprefaliarum est quoddam particulare bellum ad qd non potest quis compellere alium q. subditū ut in uerbis fructorum hic finitur lex Conrad c. dominus. Sic dicere non credo. Nam supponit q. in executione siue possit iudex laici siue compellere iudicem bonorum etiam non subditum ad exequendum q. est falsum q. par in parem non habet imperium ut. ff. de arbi. l. nam magnus. ff. ad trebell. l. ille a quo §. tempestinum de elect. c. innocuit. Male tamē facit qui exequitur adeo q. ppter hoc conuenitur eorum superiore suo. Nam donec seruata iuris dispositione. Iusticia suus cōleg potest effectum non debent offendi iuris regule. In neutro ergo casu uendicat sibi loci compulso. Sed utroq. casu honeste faciat exequendo quia sicut non deficiente iurisdictione cum recurritur ad reprefalias debet suuari licet compelli non possit in ciuitatibus autem federatis de quibus in. l. nō dubito. ff. de captiuis hoc utentur de plano. Pondera dicta per bar. in tractatu reprefaliaz in octaua questione principali In §. ad qrtum querit.



## Capitulum c xxxiii.

Estat uidere de materia contra  
quas quod proprie appellat subiec-  
tum. Circa quod plura queruntur

Et primo queritur an si ciuitas  
mediolanensis repressalias indixerit contra bo-  
nonienses uel homines de bono. possint exer-  
ceri contra incolas ciuitatis bononie uel de  
bononia. Solutio ista uerba bononienses  
et de bononia idem important. ff. de execu. tu.  
l. sed reprobari. §. amplius et ibi glo. Solutio  
ista uerba uoces bononienses respiciunt muni-  
cipes ut. l. i. ff. ad municip. Et uerbum muni-  
ceps est genus ad ciues et incolas ut no. C.  
de incolis. l. ciues. probat tex. ff. ad municip.  
l. filii. §. municipes. ergo inferendo de primo  
ad ultimum sequitur quod ex natura uerborum  
contra incolas possint exerceri repressalie. et  
hec uera quando incole subeunt onera ut. l. l.  
ad municip. secus si non subeunt. Tu pon-  
dera ea que dixit bar. in tractatu repressalia-  
rum in vltima questione principali in v. ad pri-  
mum queritur. uide bal. in aut. et ideo. C. ne  
uxor pro marito in viii. col. in fine.

## Capitulum c xxxiiii.

Secundo queritur retento eodē  
thematē ut puta si ciuitas medi-  
olanensis induxerit repressalias  
contra homines de bononia sue  
bononienses. an exerceri possint contra bo-  
nonienses alibi morantes. quidam dicunt quod sic  
quia origo non mutatur. l. assumptio. ff. ad  
municip. Alii distinguunt an inducantur  
contra homines de prouincia. et tunc non ex-  
ercentur contra alibi morantes quia non cen-  
sentur de prouincia ut. l. prouinciales. ff. de  
uerbo. sig. Aut contra homines de una ci-  
uitate et tunc procedit una opinio. Et cū distin-  
guunt an alibi morantur tamen contra eandē  
prouinciam et tunc contra alios exerceri pos-  
sint. aut in alia prouincia et tunc secus per ea  
que no. glo. in l. adoptionibus. C. de opt.  
Quarti dicunt quod secundum propriam signi-  
ficationem uocabuli alibi morantes cēsentur  
bononienses. Sed secundum comunem uisum  
loquendi. secus et communis usus loquendi p-  
ualet. ff. de le. iiii. l. liberos. §. quod tamen casti-  
us. Et sic contra istos non poterunt  
exerceri. Alii dicunt quod contra bono-  
nienses alibi morantes onera tamen subeunt  
bononie poterunt exercere Sin autē non sub-  
eant secus ut. l. i. ff. ad municip. et l. sed et re-  
probari. §. amplius. ff. de execu. tuto. et l. l. com-  
scinus in fi. C. de agri. et cen. Pondera ea  
que tractantur per bar. in tractatu repressalia-  
rum in vltima questione principali in v. ad finem  
queritur uide bal. in aut. et ideo. C. ne uxor  
pro marito in vii. col. uide ange. insti. de iur  
naturali. §. sed naturalia in fine bar. in l. p-

uinciales. ff. de v. signi. fo. de imola in rubel.  
solu. ma. io. an. in addi. spe. in ti. de iniuriis et  
dampno dato bal. in l. si eadem. ff. de officio  
assessorum bal. in. c. l. de forma fidei do. in. c.  
statutum. v. cum nomen in ultia col. Szept.  
bar. in. l. i. ff. quilibet iur. bal. in l. adoptione  
C. de adept. pe. de ancha. in. c. l. de iniuriis  
et damp. dato li. vi. pau. de castro in dicta. l.  
si eadem bar. in l. huiusmodi. §. legatum. ff.  
de le. i. bar. in l. tutelae. §. si. ff. de capi. dimi.

## Capitulum c xxxv.

Terio queritur An possint exer-  
ceri repressalie contra ciues et in-  
colas bononienses onera subeun-  
tes bononie qui etiam sunt ciues  
mediolanenses uidetur quod possint contra eos ex-  
erceri. Nam si potest ciuitas indicare contra  
non subditum Confirmatur. Nam propter  
potest petere ut usufructuario denegetur ius  
utendi propter contumaciam suam et contra  
ut. l. si propter et l. hoc amplius. §. si cum  
et §. sequi. ff. de dampno infec. Si simili ergo  
sic hic in duobus ciuitatibus in eundem ciuem  
ius pretendunt. In contrarium tenet quod  
dam indistincte ratio. Nam hoc ius suc-  
cedit in locum deficientis iurisdictionis sed  
ciuitas in ciuem suum bene potest iurisdic-  
tionem exercere ergo non subicitur repressalia  
ut. l. i. §. utque. ff. si quis te li. esse iuss. Pre-  
terea ciuitas tenetur defendere ciuem suum.  
Ergo repressalie indicere non artabunt eum ut  
l. nendicantem. ff. de eui. Preterea si ciuis  
mediolanensis artaretur tunc ciuitas contra  
se ipsam p-tere uidere et id quod dicitur. ff. de iure  
fisci. l. si fraude. §. neque. Itaque cōfessionē nō puto  
ueram indistincte. ymmo si de facto nō pos-  
sit ciuitas artare ciuem suum. etiam ciues ciui-  
tatis contra quam inducuntur repressalie op-  
time contra eum exercebantur repressalie.  
Nam propter defectum iurisdictionis indu-  
cuntur ut supra pluries tactum est. Sed  
de iure non debet iurdictio deficere cum de  
iure omnes subiciantur principi. ff. ad l. ro.  
de hac. l. de precario ix. q. iii. c. cunctis per mun-  
dum et ca. per principalem sed de facto. defi-  
cit quia de facto non cognoscunt sicut igitur  
de facto deficere potest cum non subditus in-  
iuriatur. Sic et de iure subditus de facto re-  
sistere potest. Et sic recurri potest ad remedium ex  
ordinariū. fateor tamen quod subditus si artabit do-  
nec spāliter contra non subditum processum  
fuerit iuris ordine seruato nec processus sententia  
post effectū propter facti rebellionē. Tu pōdes  
dicta per bar. in tractatu repressaliarum l. vii  
q. principali in v. ad tercium queritur.

## Capitulum c xxxvi.

Quarto quero an in mulieres bo-  
nonienses exerceri possint appa-  
ret quod sic. Nam in eis habet locum

postliminiam ut. l. i. C. de capt. Contra-  
rium est uerum. nam in personam capi non  
possunt. C. de offic. eius qui uices alte gerit au-  
ten. sed hodie. C. de ex. ce. re. in. aut. h. no-  
no iure. et illa facultas concessa a iure gen-  
debit intelligi civiliter. ff. de seruit. l. si cut.

Donderi ea que predicantur a bar. in tra-  
ctatu repelaliarum in vii. q. principali in v.  
ad quartum queritur.

### Cap. c. xxxvii.

Quinto quero. An contra clerici-  
cos bononienses possint exerceri tex. e.  
q. no in ca. uno de iniuriis li. vi.

Quid de clericis coniugatis de  
bilibus dicendum ut ca. uno de cle. coniuga. li. vi.

An episcopo negligente facere iusticia de  
clericis suis cum haberi non potest ad superi-  
orem recursum q. episcopus est scismaticus possint  
iudici repelalie contra clericos eosdem per  
iudicem secularem. Quidam in hoc dubitant  
nec est dubitandum nulla est concessa potestas co-  
tra clericum qualitercumque delinquentem. ut  
ca. contingit et in audientia de sen. exco. et  
ca. si iudex laicus eo. ti. li. vi. poterunt po-  
terant ergo coerceri per superiorem suum  
et poterit haberi recursus ad superiorem iudi-  
cem secularem per uiam reuocationis ut ca.  
i. de off. ordi. xxiii. q. i. regum. et ca. ad mis-  
tratoces et ca. princeps. Donderi narra-  
ta per bar. in tractatu repelaliarum in ver-  
bo. ad quintum queritur in vii. q. principali. uis-  
to. doctores in dicto ca. l. de iniuriis li. vi.

### Cap. c. xxxviii.

Sextimo queritur An contra bo-  
nonienses euntes paduam pro stu-  
dio possint exerceri. uel etiam stu-  
dentes bononie. tex. est q. non in

autem. habita. C. ne filius pro patre et hoc uel  
dicat sibi locus si student iura in locis preui-  
legiatis privilegio studiis. Secus autem in  
aliis studeant iura. ut in probemio. flor. §.  
hec autem tria. In aliis autem facultatibus  
ubique doceri potest ut. l. si duos. §. cum autem  
ff. de excu. tu. Et quod dictum est de sco-  
laribus idem dicit de scriptoribus et bidellis  
et accidentibus cau. scolarium ut. l. i. C. de  
mili. test. et. l. i. ff. de bo. po. ex te mili. Idem  
de patre et aliis agnatis qui irent ad uiden-  
dum filium et agnatum in studio. ff. de iudi.  
l. ii. §. idem in glo. super uerto uenerit.

Donderi ea que narrantur per bar. in tra-  
ctu repelaliarum in vii. q. principali in v. ad  
sextum queritur et. uide bar. in. li. §. legatis  
ff. de iudi. l. iia.

### Cap. c. xxxix.

Septimo queritur an contra bono-  
nienses ambasciatores possint exerce-

ri. So. non poterunt ut. l. i. ff. de legationi-  
bus. ff. de iudi. l. iiii. §. legatis et uide de foro p.  
pe. ca. si. Donderi ea que predicantur a  
bar. in tractatu de repelaliarum in vii. q. o.  
principali in uersu. ad septimum queritur ut  
de bar. in. l. prima. §. legatis. ff. de iudiciis.

### Cap. c. xl.

Ocho queritur An contra Bono-  
nienses euntes ad nundinas pos-  
sint exerceri tex. est in. f. una. C.  
de nundinis q. non. An contra  
euntes ad sanctum Iacobum uel ad aliam pe-  
grinationem possint exerceri. rideo non ut de  
cleri. pegri. per totum. C. communi de succe.  
autentic. omnes ibi liberi. Idem de con-  
tibus ad locum indulgentie propter tene-  
dam hospiciam uel aliquid simile in suum  
accidentium pro indulgentia. An contra  
Bononienses vagantes qui vi ventorum de-  
seruntur ad ciuitatem indicentem exerceri  
possint rideo q. non p. aut. nauigia. C. de furr.  
Ad idem de nauis. l. i. li. xi. An etiam contra  
illos qui in iura uocari non possunt poterunt  
exerceri qui enumerantur in. l. ii. ff. de iniur.  
uoc. rideo non. Ratio Nam si forent conde-  
pnati non possunt capi multo minus p. delicto  
uel debito alterius hoc fieri poterit. Ex  
quo inferitur q. si Bononiensis eligeretur in  
potestatem mediolanensem ibi non posset de-  
tineri uigore repelaliarum. Et si Bononiensis  
iret ad ciuitatem Mediolani. propter finis  
conflagrante. Et idem in similibus casibus qui  
enumerantur in dicta. l. ii. ff. de iniur. uoc.

Donderi nota per bar. in tractatu repel-  
aliarum in vii. questione principali in v. ad  
octauum queritur et in v. ad nonum queritur  
et in v. ad decimum queritur cum sen. de pe-  
grinis uide bar. in aut. oēs pegri. C. cois  
de succe. si. bar. in. l. ii. §. legatis. ff. de iudi.

### Cap. c. xli.

Decimo queritur An contra bo-  
noniensem potestatem mediola-  
ni ibi in iusticia facientem possit  
concedi repelalie In. de bel. in  
aut ut non si. pigno. tenet q. sic p. l. i. ff. q.  
quique iur. Alii distinguunt an fecerit ta-  
lem iniusticiam p. qua conueniri non possit  
officio dñe uel sit talis qua conueniri non  
possit ut. l. pars liaz de iudi. et. l. ne magrat.  
ff. de iniuriis et tunc non possunt iudici. fini-  
to autem officio poterunt iudici prius requi-  
sito iudicatore nec debet requiri iudex ciui-  
tatis sue qm ibi conueniri non debet rone talis  
omissi. C. ubi de ratio. agi oportet. l. i. et. l. ii. et  
C. ut omnes tam ciuiles q. crimi. l. una et in  
aut. ut iudi. siue quoquo iustia. §. necessita-  
tem. Sin autem talis sit qua conueniri pos-  
sint tunc poterunt iudici. Hanc solutionem  
non puto ueram in hoc secundo membro. Nam



reprehensio indicuntur in defectu iurisdictionis deficientis. Si ergo durante officio queriri possunt et in loco commissi ut in l. ii. C. ubi de ratio agi oportet et ut oēs tamen civiles quod cri. i. l. i. ad quod est locus reprehensio. Nam puto uerā in primo membro ubi dicitur quod finito officio possit iudici non finitio potest queriri. et iur. fore suari ergo si est opus hoc remedio. fateor tamen quod utroque casu ubi per uiam iuris non possit arceri. recurrere dum esset ad reprehensio et hoc casu non est requirendus iudex ciuitatis proprie quod super hoc non potest ius facere per iura supra allegata. Pondera non per bar. in tractatu reprehensio in vi. q. principali in uersiculo. ad primum queritur.

#### Capitulum c lxi.

Undecimo queritur an contra officiales potestatis uel rectoris in iusticiam facientia. possint indicere reprehensio Jac. de bel. tenet quod sic. Illi dicunt hoc nerum ubi officii expresse iurauerunt rectorē ad faciendū iusticiā ut. C. ad duo. diuer. iudi. l. per hanc. C. de execu. mili. l. pe. li. x. Sin autem officiales expresse contradixerunt non possunt contra tales indicere quoniam. C. de appel. Sin autem officiales nec consentiunt nec contradicunt quia absentes uel ignorantes tunc etiam non possunt tit. l. i. in prin. ff. de ma. conue. Sin autē sit presentes nec consentiunt nec contradicunt tunc si sunt officiales deputati ad merum officium qui non uocantur ad consilia ut sunt notarii et loci baronarii. Tunc etiam contra tales non poterunt indicere. ff. de ma. conue. l. i. Et ratio quod non poterunt resistere. C. ut omnes tam civiles quam criminales. l. i. §. officium. Sin autem sunt officiales assumpti ad consilium dū tunc contra illos poterunt indicere. Uide bar. in tractatu reprehensio in vi. questione principali in uersiculo ad secundum queritur.

#### Capitulum c lxi.

Uodecimo queritur an contra consules priores ciuitatis denegantes facere iusticiam possint indicere Jac. de bel. dicit quod sic. Illi dicunt hoc uerū contra presentes. Secus tamen contra absentes quod contra eos ut consules indicere non poterunt ut. l. i. ff. de ma. que in principio. Pondera que narrantur per bar. in tractatu reprehensio in sexta questione principali in uersiculo ad tertium queritur.

#### Capitulum c lxi.

Decimo queritur an contra singulas personas possint indicere penitus innocentes propter delictum domini uel alterius prius uel de quo non sit iusticia Jaco. de bel. dicit quod

non. quod non debet quis grauari pro delicto alterius regula non debet de regulis iuris li. vi. Illi contra per ca. dominus xxiii q. ii. nam in sententia interdicti puniuntur singuli et innocentes ut ca. si sententia de sententia ex co. li. vi. In bello iusto reperiuntur innocentes. sed reprehensio sunt quoddam bellum particulare etiam licet captus sit innocens tamen ciuitas habet ius in eum et hoc uidetur seruari. Pondera non per bar. in tractatu reprehensio in vi. q. prin. in. v. ad quartum queritur

#### Capitulum c lxi.

Undecimo queritur An contra homines subditos quoad quid ciuitati boni. non autē plene indicere possint. Solutio si sint ciuitates et uniuersitates simpliciter suppone ciuitat. boni. sed ex pacto habent aliquas exemptiones et iurisdictiones contra istos indicere poterunt quia non sunt subiecte sed si quo ad quā se subiecerunt et contra istos propter delictum domini habentis eas subiectas non inducitur reprehensio quia sunt libere ut. l. non dubito. ff. de captiuis sed propter delictum dictarum ciuitatum indicere poterunt sicut et bellum licitum fieri poterit. Pondera nota per bar. in tractatu reprehensio in vi. questione principali in uersiculo ad quintum queritur.

#### Capitulum c lxi.

Undecimo queritur An contra certum genus hominum facere iusticiam denegantiū indicere possint reprehensio. Et dicere dum est quod sic seruata forma. Tu pondera nota per bar. in tractatu reprehensio in vi. questione principali in uersiculo ad sextum queritur

#### Capitulum c lxi.

Estat uidere de causa materiali ex qua insurgunt reprehensio et est defectus iurisdictionis. Nam primo debet requiri iudex qui si negligat nec haberi potest recursus ad superiorem tunc cōcedi possunt. Circa hoc queri potest de pluribus. An requiri debeat iudex ut iusticiam faciat antequam reprehensio concedatur.

#### Capitulum c lxi.

Primo queritur. Quis debeat inquirere iudicem ut iusticiā faciat. et pars iniuriam passa et iudice negligente debet adire rectorem ciuitatis proprie et facere fidem de requisitione et neglectu et petere ut iurat iterato ut iusticiā faciat et tunc eo negligente poterit iudici quod aut requiratur prius requisitio probat in aut. ut

differentie iud. in principio coll. iiii. Pondera  
ea que no. bar. in tractatu repelalarum in  
secunda. q. principali in uer. ad primū querit

### Capm c xlix.

Secundo queritur an si pars du-  
bitaret ligare in ciuitate iniur-  
riam inferentis propter eius po-  
tentia. An iudex suus possit scri-  
bere ut i alios progēt iurisd. l. eligāt ar. iure  
ciuili. pro certis psonis utpute miserabilibus  
hoc clarum q sic ut. l. i. in fi. C. quando Im-  
perator inter pu. 7 uidu. iure canonico laci-  
pmisum est hodie per ca. statutus. 6. cū uero  
de xpt. li. vi. quo ad articulum impetrati-  
onis. Pondera ea que narratur a bar. in tra-  
ctatu repelalarum in secunda questione pri-  
cipali in uersiculo ad secundum queritur.

### Capm c l.

Tercio quero quis iudex requiri  
debet ut iusticiam faciat. So.  
debet primo requiri iudex ciuita-  
tis iniurantis 7 tunc si negligit  
iusticiam facere adhibet proximum superiorē  
quo deficiente adhibet principem in autē. ut  
disse. iudi. in principio. Quibus modus defici-  
entibus omnibus inducuntur repelalie p ci-  
uitatem propriam que succedit in locum de-  
ficientis iurisdictionis. Sin autem nō ne-  
gligat sed in iusticiam faciat pronunciando l  
ique. tunc si ciuitas habeat iudicem appella-  
tionis deputatum ad ipsum per appellationē  
additur. Et si non habeat indicentur repē-  
salie. nam est quod imputari poterit ciuitati  
q non deputauit iudicem appellationis.  
Sin autem iudices appellationis bis iusticiā  
fecerunt tunc uidetur pars destituta oī sub-  
sidio cum nō liceat tercio appellari nec uidē-  
posse dici repelalie cum non defecerit iuris  
dictio sed dici potest q si ob grām ptis inlo-  
pniciat tūc poterit peti restitutō ut. l. p.  
fecti pto. ff. de minor. Sin aut ob grās illorū  
qui regunt tunc peti tenētur ad interesse ut  
C. ne lice. po. l. i. 7 de his qui po. l. i. 7 sic ad  
interesse tenentur actione in factum. ff. p lo-  
cio. l. quicquam. Sin autem inique lata sit  
ex solo iud. motu tunc est destituta omni sub-  
sidio ut supra dictum est. Pondera narra-  
ta per bar. i tractatu repelalarum in .ii. qōe  
principali in uersiculo. ad terciū queritur.

### Ca. c li.

Quarto queritur qualis in iusticia  
requiritur ut repelalie inducā-  
tur So. p modico non indicun-  
tur cum hoc sit remedium extra  
ordinarium quod non datur pro modico ut. l.  
leio. ff. de in inte. restit. 7. l. si oleū ff. de dolo

requiritur etiam q totaliter sit i? lesū lē? si  
parcialiter. l. quoties. C. de preci. impo. offe.

Nam totaliter iusticiam non facit. C. de  
seruis su. l. mancipia 7. l. iij. §. in cum. ff. de  
damp. infecto. Tu pondera ea que pōdicāt  
a bar. in tractatu repelalarum in .ii. qōtione  
principali in vñ. ad quartū queritur.

### Capm c lii.

Quinto quero An dicatur nō pos-  
se haberi copia supioria ut sit lo-  
cus iurisdictioni repelalarum  
Solutō ubi non potest haberi de  
iur nec d factō tē ē op? ut. c. dñs. xxiij. q. ii.  
7. l. nllus. C. d iudeis. Sin aut d iure haberi  
potest non tamen de facto quia non obediūt  
tuc idem. Sin autem haberi potest d iur  
sed difficile est haberi de facto utpute Impa-  
tor cum sit ualde distans 7 pars est paupri-  
ma tunc etiā est locus. ff. de pig. act. l. si fuus  
ff. de diuersis 7 tempali pscip. Pōdera  
ea que tractantur a bar. in tracta. repelaliaz  
in secunda questione principali in uersiculo ad  
tercium queritur 7ē.

### Capm c liii.

Estat uidere de causa formali 7  
hec est duplex. Nam est forma in  
dicendarum 7 est forma exercē-  
darum. forma autem indicēda-  
rum implicat formam defensionis illius cōtra  
quem indicuntur. Et circa hoc etiam d plu-  
ribus querendus. Et primo queritur quo  
iure concedantur hic dicit aliqui quod si cō-  
cedantur p illos qui non recognoscunt supio-  
rem ab illis hoc peti non debet iure actionis  
nec per officiu sed debet requiri man? regia  
per quam omnia expediebantur ut. l. ii. ff. de  
origine iuris. Solū enī illud regriē qd ius  
gētū iquebat. l. q cā pp? quā pcedāt sit uera  
salus tamē defensionibus illi ptra quem eū  
hoc sit iure naturalis ut in cle. pastoralis. §.  
ceterum de re iudi. 7 habenti repelalias ius  
sicit ostendere concessionem sine alio proce-  
su 7 recte presumuntur cetera agitata. Nam  
instar est sacrilegii. C. de sacrileg. Et hec est  
uera in territorio concedentis uerū. qz gēo  
contra quam conceduntur uti posset eodem  
iure per titulum q quilibet iuris. Et si aliter  
ex pacto de hoc deberet cognoscere. ut puta  
arbitrē uel alii incumbere cuius probandi  
illi cui sunt concessa seruata forma eorū que  
iuregentium requiruntur. Ideo tucius ē q  
fiat processus in scriptis redigatur. 7 hoc te-  
net archi. in ca. uno de in iur. li. vi. Nam te-  
net q pcedere debet monitio 7 sententia  
super neglectu. Et ita sentit gualdo conco-  
dienis episcopus. Sin autem repelalie pe-  
tantur ab his quibus hoc concessum est a sta-  
tutis. tunc si statutum tradit ordinem tunc



q̄ saculeas concedendi rep̄salias procedit a iure civili cum statuta sint ius civile ut. l. omnes populi. ff. de iusti. 7 iure tunc debz implorari officium officialis libellus porrigi potest citari 7 pcedi ut disponunt iura. Pondera nōta p bar. in tractatu rep̄saliarum in tertia questione principali in v̄. ad primū q̄rit

#### Capitulum c. lvi.

Secundo queritur quis compere possit ad impediendum ut iducantur. **Solutio** quilibet q̄ interest de testi. c. ueniens de re iudi. ca. cum super. Interest autem populi contra quez indicantur 7 habens mandatū ab eo 7 quilibet de populo admitteretur sibi mandato quia cuiuslibet interest. ff. de op. noui annu. l. i. provinciali. §. si. Admittetur etiam illi qui sunt de populo indicentia. q̄ interest de iniuste indicantur ut eodem iure utantur contra eos. ff. q̄ quisq̄ iuris i rubro. 7 per totam nigruz. Tu pondera q̄ dixit bar. in tractatu rep̄saliarum in. iiii. q. principali in uersiculo. ad iii. queritur.

#### Capitulum c. lv.

Terzio queritur que defensione conpetant illi contra quem petunt **Solutio.** cōpetit exceptio q̄ petens nō solum habeat ius petendi uel ratione persone uel iure competentis l. q̄ paratus est emendare ut. ca. dominus noster xxiii. q. ii. Sed an possit pacto frui tunc huic iuri. Ecce eligitur rector ciuitatis bononie qui iurat non petere rep̄salias contra ciuitatem nūquid obstat exceptio reuocacionis **So.** passus est propter iniquā condemnationem tunc quasi in modum appellationis recurritur ad iudicem proprium in locum deficientis iurisdictionis. sed sic potest appellacioni ut. l. si. C. de tempo. appel.

Sinautem passus sit iniuriarum tunc pactū non operatur effectum q̄ remitteretur dolus futurus ut. l. si unus. §. illud. ff. de pact. 7. l. conuenit. ff. de pactis tota. Pondera nota. per bar. in tractatu rep̄saliarum in. iiii. questione principali in v̄. ad quartū q̄rit.

#### Capitulum c. lvi.

Quarto queritur qualiter constabit de iniusticia facta uel de ea negata. **Sol.** per acta primi iudicis uel per testes requiri potest primū iudex ut faciat copiam actorum 7 si non faciat hoc est iniusticia facere ut. l. ii. C. ut lite pen. Pondera nota. per bar. in tractatu rep̄saliarum in. iiii. q. prin. in v̄. ad quintū q̄rit.

#### Capitulum c. lvi.

Quinto queritur. an si aliqui capiuntur uigore rep̄saliarum detineri ualeant ut ex primo an ex secundo decreto. **So.** si idē

sunt rep̄salie pte citata et comparante 7 lata fuerit super hoc sententia tunc ea detinetur ex cā iudi. ut. ff. de re iudi. l. a. di. pio. finit si compareat tē pmo dabit finis ut capiat ex primo decreto ut effectus tedio uēiat. Et sic contumax perseverauerit tunc dabitur licentia detinendi ex scōdo decreto. Pondera omnino ea que predicantur a bar. in tractatu rep̄saliarum in. iiii. questione principali in v̄. ad sextum queritur.

#### Capitulum c. lvii.

Estat uidere de forma exercendi rep̄salias indicens 7 circa hoc q̄ rendum est de pluribz. Et primo an liceat illi cui sunt concessę rep̄salie auctoritate p̄pria uel per ministros concedentis cape homines contra quos indicantur. **Solutio** iaco. de beluis tenet q̄ nō licet auctoritate p̄pria cape personas nec res sed iudiciaria ut. l. si miles. ff. de re iudi. Suppleat quidam hoc verum si potest haberi copia iudicis a se auctoritate p̄pria licebit ff. que in fran. credi. l. ait p̄tor. §. si debito. rem. C. de decuri. l. generali. Et hoc puto uerum ponderari enim debz modus facultatis concessę 7 ille seruandus de rescrip. cum dilecta 7. l. diligenter. ff. mandati. Pondera nōta p bar. in tractatu rep̄saliarum in nona questione principali in v̄. ad primū queritur

#### Capitulum c. lviii.

Secundo queritur. An personas captas 7 res teneatur capiens p̄sentare iudici. An possit reuocari sibi. **So.** iaco. de bel. tenet q̄ tenetur p̄sentare iudici per. l. nō est singulis. ff. de reg. iur. ne fiant illicite exactiones ut. l. illicitas. ff. de offi. p̄sbi. Alii dicunt p̄cedere in personis captis que debent ad iudicem duci ut. l. generali. C. de decuri. 7 de pace iura. fir. col. x. Res autem que capiuntur ex causa iudicati uel ex primo uel ex secundo decreto ut. d. tactum est remanebunt penes capiētes ut. l. is cuius. §. qui legator. ff. ut in pos. lega. Et per hoc non est necesse plus ire ad iudicem. Nam sufficit prima confessio.

In his omnibus puto ponderandam formam concessionis ut. d. p̄xime dixi. Tu pondera nō. per bar. in tractatu rep̄saliarum in ix. questione principali in v̄. ad scōm queritur bar. in. l. generali. C. d. decuri. li. x.

#### Capitulum c. lx.

Terzio queritur. An 7 qualiter res capte uigore rep̄saliarum uendantur uel in solutum accipiant uel extimantur. **So.** Dicunt

quidam q̄ iudicio auctoritate uenduntur ut  
l. mīlea. §. ii. ff. de iud. Extimatio fiet per  
iudicem. l. ii. C. de iure do. impetrā. 7 in cō-  
putatione fiet deductio expēsar. ff. ad l. fal.  
l. in quantitate 7 l. i. finis. §. in pputatione  
C. de iure doli. Et in his etiam puto attendē-  
dam formam concessionis. Pōdera ea que  
predicantur a bar. in tractatu repositarum in  
nona q̄cōe principali in vñ. ad tertiū querit.

### Caplm c lxi.

Quarto queritur. An diebus feri-  
tis possint in dicte repositarie ex-  
erceri. Solutio. in dieb' feriatis  
propter hominum necessitatem  
possant sicut executiones sententiar. ut .c.  
ultimo de iud. Si autem de feriatis ob reue-  
rentiam dñi tunc dicunt aliqui hoc fieri posse  
in casu ne contigat de perire totum concessi-  
onem ut puta si illi contra quos concedunt  
sint 7 si ueniat nisi diebus feriatis allegant. l.  
i. 7 ii. ff. de feriis. Hanc conclusionem si  
credo ueram in hoc. l. membro. Nam expta  
occasione repositarum capiuntur. aut ex p̄-  
mo aut ex secundo decreto. aut causa iudica-  
ti ut supra deductum est. Et hec omnia inhi-  
bentur tempore feriato. ut l. dies statim al.  
legata. Etiam lex ponit specialiter in feriis  
i ductis propter hominum necessitatem ut in  
casibus illis procedi possit illis diebus ut l. i.  
7 ii. ff. de feriis. De feriis autem indultis  
ob reuerentiam dñi nil excipitur ergo stādū  
regale. Tu pondera ad ea que hic loquitur  
proama meus nota. per bar. in tracta. repre-  
salarum in ix. q. principali in uersu. ad quar-  
tum queritur bar. in auten. 7 ideo. C. ne ux-  
or pro marito in penult. col.

### Caplm c lxii.

Quinto queritur si quis uale se d̄-  
fendere uel res captas nigore re-  
positarum qualis cognitio adol-  
beat. So. dicunt quidam q̄  
si facta est executio plena de qua res nē dice-  
uel insolutum date tunc est opus ordinaria  
cognitione nec audietur officium implorans  
ut l. a diu pio. §. si post additū. ff. de fludiis.  
Si autem non sit executio plene  
facta sed pendet tunc pōi officium iudic.  
implorare. per quod fiet edictio actorum. uel  
gore quorū indicti sunt repositarie 7 poterit  
opponere ad defectum iuris illius cui sunt cō-  
eisse 7 habilitatem persone 7 ad alia de qui-  
bus supra tacrum allegat l. iii. C. de eden. 7 l.  
ii. C. ut lite pen. 7 l. i. ff. de eden. Et fiet sup  
hoc summaria cognitio. Hanc conclusio-  
nem non credo ueram in hoc secundo mēbro  
Nam si sint in dicte repositarie parte citata 7  
comparente 7 in iudicio persistente. tūc cla-  
rum est q̄ dicta conclusio procedit q̄ ille ex-

ceptiones ueniebant proponendi a principio.  
Nec opponi potest post sententiam ut l. per  
emptoribus. C. sententiam rescin. non posse 7  
l. quidem. C. de except. 7 c. pastoralis extra  
eo. ti. Si autem in dicte sunt partes p cō-  
tumeliam absente ex primo 7 secundo decre-  
to. Si inter. uenit secundum decretum uel e-  
quiualens secundo decreto ut lapsus anni in f̄  
ali. tunc idem q̄ non auditur nisi per uia or-  
dinariam. l. finita. §. si plures. ff. de dampno.  
insec. Et. i. contentaneum quomodo 7 quan-  
do iudex 7 ibi no. 7. c. cōtingit de dolo 7 cō-  
tra. In primo aut decreto' procedere possz  
Pondera no. per bar. in tractatu reposita-  
rum in ix. q. in vñ. ad quintū queritur.

### Caplm c lxiii.

Hic membro adiungitur de reme-  
diis exacti. Et circa hoc de pluri-  
bus queritur Et primo queritur  
An ex acto competat regressus  
contra illum ppter cuius debitum uel delictum  
exact. est. Jaco. de are tenet in l. ii. ff. d̄  
v. obli. q̄ si succurritur contra illum ppter  
cuius delictum seu debitum in dicte sunt rep̄-  
sarie p. l. naz 7 fuus. ff. d̄ neg. gest. ff. nan. cau.  
stabu. l. licet. §. si. ff. de iis qui deie. uel esu. l.  
et si vñ. §. cum autem Alii dicunt contra  
per glofam. ff. de reg. iuris. l. si quis dolo. §. i.  
Nam iste non est exactus ppter illi puatū  
ymmo ppter iudicem qui iusticiā denegauit  
uel iniusticiam fecit. Dicunt ergo q̄ aut est  
exactus iudex quia fecit iniusticiam 7 tūc  
iudici nō succurritur ut dicta. l. si quis dolo  
Aut est exactus iudex quia neglexit iusti-  
tiam 7 tunc succurritur contra illum d̄ quo  
requirebatur iusticia ut. C. de exac. tribu. l.  
missi. in fi. li. x. Aut est exactus tertius d̄  
populo tunc pcedit opi. ia. de are. l. licet in fi  
nan. cau. stabu. 7 c. Pondera ea que pcedi-  
centur a bar. in tractatu repositarum in. x.  
questōe principali in vñ. ad primū queritur  
uide bar. in l. ii. §. si. ff. de v. obli. uñ bar. in  
aut ut non fiant pignora bar. 7 ange. in l. nā  
7 fuus. ff. de neg. gest. bal. in aut. 7 iñ. C. ne  
uxor p ma. ange. in l. si. ff. si fa. hurtus fecisse  
dicat uide bal. in dicta. l. ii. §. si. ff. de v. obli.

### Caplm c lxiiii.

Secundo subsequēter querit. An  
exacto succurratur contra rec-  
torem sicut contra debitorem  
principalem ut supra dictum est.  
Solo. Conueniendus est debitor principalis  
7 si non est soluendo tunc rector cui ipse etiā  
debitos facit iusticiam denegādo. q̄ hic ordo  
sit seruandus pbat. ff. de ma. cōoc. l. i. in prin-  
de cōre. fisci. debi. l. quoniam. Ultimo per  
uenitur ad officiales qui cum possint impeller  
rectorem ad iusticiam faciendam neglexerūt



ff. de cu. 7 ra. di. l. i. §. nunc tractemus: Tu pondera ea que predicantur a bar. in tractatu repelaliar. in. x. qdē principali in versi. ad secundum queritur.

### Capitulum c. lxx.

Exco queritur An captus uigore repelaliarum possit auctoritate propria homines illius ciuitatis capere in qua captus fuit 7 uidetur qd sic per totum ti. qd quisqz iuris ff. Contrarium est uerum. nam titulus qd quisqz iuris uendicat sibi locum in iuris executione ut si una ciuitas induxit repelalias iniuste contra aliam. Hoc idem licet alii contra primam. non autem loquitur in executione facti ut si spoliare te. liceat tibi spoliare me. qd sic permittetur uindicta contra id quod no. ff. ad. l. aquil. l. sciam. §. qui cum alr. recurrit ergo ad ciuitatem suaz 7 petat repelalias contra illam. ciuitatem i qua captus fuit. Pondera ea que predicantur a bar. in tractatu repelaliarum in x. qdē principali in versi. ad terciū queritur bar. in l. i. ff. qd quisqz iuris ange. in. i. ff. C. de nauib. autem. habita ne filius pro patre in pri.

### Capitulum c. lxxi.

Quarto queritur. An per statuta repelalie concedi possint in casibus al no pmissis a iure cōmuni Solo. Ciuitas cōtra terras plebe subditas potest permittere l. cōmuni. Sed in terras liberas uel etiā confederatas de quibus loquitur. l. non dubito. ff. de pact. non potest. Ratio. Nam in concessione repelaliarum utitur in cause cognitōe de iniusticia facta uel iusticia denegata. Et sic in hoc una ciuitas non potest statuere contra alias quia par in parem. 7c. So. uertitur. An haberi possit copia superioris denegantis iusticiā facere 7 de hoc nihil potest una ciuitas contra aliam statuere. Nam non potest statuere qd indicantur repelalie non requilito superiore denegantis iusticiam. Nam hoc foret tollere iurisdictionem superioris de iure iuran. uenientes. Tercio etiam queritur aut. impioris indicantis 7 ipsa non recognoscens superiorē 7 illa cuius auctoritas requirit. Et de hoc potest statuere ciuitas qd non requisita ea 7 qd unus pro debito alterius caplatur. C. de ot. agro. deserto. i. l. i. ff. sicut statuitur in casibus qd unus pro debito iuri teneatur. C. qui. mo. pi. ta. cōtraba. l. satis 7 filius pro patre ut. C. de priuilegiis. l. filii. xli. Alcio queritur an statutum ciuitatis quo cauetur qd filius teneatur pro patre delinquente possit exerceri contra filium existentem extra territorium ciuitatis concedentis. Sol. aut filius natus erat tempore delicti cōmissi a patre 7 tunc aut queritur uiquid fieri possit executio statuti

contra filium alibi existentem 7 tunc potest ut. l. a diu. plo. §. penul. ff. de re iudi. 7. l. cum unus. §. cum bis. ff. de bo. auc. iudi. pos.

Aut queritur nūquid condi. ex lege ex illo statuto agi possit contra eum 7 potest. qd actio ipsum sequitur cui competit. C. de lon. temp. prescrip. l. ff. Nec uera nisi filius ante delictum cōmissum contraxisset alibi domicilium uel inde foret ratione antiquę originis qd tunc illa ciuitas ut preueniens possit illam defendere ab illo statuto. Si autem filius natus sit post cōmissum delictum. tunc non agetur contra illum. Nam statutum intelligitur de filiis ante habitis. ff. de nota. l. in delictis. §. si extraneus. ff. de mili. te. l. si tricius. Item dico qd si statutum habet qd unus de una uilla teneatur pro delicto alterius. Effectus de nouo homo illius uille nō tenetur pro delictis antiquis. C. de decuri. l. p. uidendum 7 no. dy. in. l. incola. ff. ad muni.

Pondera no. sapienter per bar. in tractatu repelaliarum in prima qdē principale in versi. ad terciū queritur 7 in uersicu. ad quartum queritur.

### Capitulum c. lxxii.

Exco queritur. An per pactum possit fieri licite ut unus teneatur pro alio. So. Per pactum prius totum expressam non ut nō fiat pignus etiam si pacificatur qd exigatur alius in quo habet ius ut. C. ne filius pro patre p totis Et licet hoc nō posset dominus index tamē dñi poterit facere uel capi homines sic conditionatos. Pondera ea que predicantur a bar. in tractatu repelaliarum in prima qdē principale in versi. ad quintus queritur. 7c. Et de materiā repelaliarū pondera que no. bar. in dicto tractatu 7 bal. in aut. 7 iō. C. ne ux. or. p marito. Et ia. de beluilo in aut. ut non fiant pignora. Et io. an. in regula non debet 7 regulis iuris. li. vi. Et doc. in. c. i. de iuribus li. vi. Et post lectionem domini pauu mei qro An dominus possit concedere repelalias 7e uniuersitatem sibi subditam prestatur responsum qd non. Nam si potest iure ordinario coercere talem uniuersitatem cessat remedium extraordinarium. l. in p. uinciali. §. i. ff. 7 operis noui nuncia. per bar. in. l. admonendi. ff. de iure iuran. in vli. nemo. 7c. l. in cause. ff. de mino. cum sy. maxime cum extraordinarius est contra ius cōmune Nunq̄ potest cōcurrere cum ordinario fm glo. in. l. i. §. unde querit ff. de publicanis. Sz pcessio repelaliarū nullo iure pcedit sz in subditū ut. 7c. pclusus p dñs pauum mei ergo non poterit nostro casu repelaliarum fieri cencessio. Et in hac opi. ad est bar. in. l. i. §. habet itaqz. ff. si quis te liber esse iussus fuit. Ex istis nascitur nō in maius illacio qd ciuitas non potest concedere repelalias propter factum sui subditi quē potest

## De Duello.

## Capitulum c. lxviii.

## ESTAT. NUNC.

videre de duello in cuius tractatu primo queritur. Quid sit duellu. Secundo quot sint spes duelli. Tercio quo iure sit pmissus duellum. Et quo inhibitu. Quarto propter quid sit pmissus et propter quid inhiberi. Quinto pro quibus causis licitum sit duellu. Sexto inter quos sit licitum. Septimo quoniam duellu dum sit.

## Capitulum c. lxi.

## Quid sit duellum.

Iuxta primum dico quod duellu est pugna corporalis deliberata hinc inde duorum ad purgationem gloriæ uel odii exaggerationem.

Dixi pugna. Hoc ponitur ut genus. Dixi de liberata hinc inde. Hoc ponit ad differentias pugne que sit ad necessarium sui defensionem ut. L. ut uim. ff. de iusti. et iure. l. i. C. unde ui. l. i. §. cum ui. ff. de ui. et ui. arma. l. sciatis §. qui cum a. ff. ad l. aquil. et olim d. restit. spolia. et cle. si furiosus de homici. Nam pugna illa si est deliberatio ex parte aggressi regulariter sed ex parte agredientis bene. uel neutrius. ut probatur in dicta cle. si furiosus. In duello autem utriusque deliberatio. Dixi duorum quod tunc proprie duellu. Et idem duellu nuncupatur ad herendo etymologie uocabuli. insti. de dona. §. est et aliud xvi. q. i. si cupis xxi. di. eltroo de pachen. cum si. Et dixi pugna duorum ad differentiam tractatu qui inter duos celebratur ex mutuo parciu concessa ut insti. de obli. cum rubricis sequentibus. Et dixi corporalis ad differentiam pugne iudicialis que fit etiam inter duos ut pote ut actor et reum ut. l. rem non nouam. §. patroni et. l. properandum. C. de iudi. et. c. fore. de uerbo. sig. Nam ibi non contenditur uiribus corporis sed iuribus ut iuribus statim allegatis. Dixi ad purgationem gloriæ uel odii exaggerationem. Nam per hoc tangitur finis et eliciuntur species duelli ut. j. lequie. Concluditur igitur de prescriptione duelli in genere ut supra dictum est. Tu pondera quod dominus proarus meus egregie quid sit duellum diffinit secundum ray. de pena forel dicebat quod duellum proprie est singularis pugna inter aliquos ad probationem ueritatis. uide bal. i. ca. i. de pace tenen. in vii. col. melius est dicere inter duos quam inter aliquos. quia proprie duellum est duorum secundum ange. in. l. militis. C. de testis militi.

Qualiter duellum sumatur et quot plex sit duellum.

Iuxta secundum est aduertenda quod duellum ut supra describitur sumitur generaliter ut tetigi in fine descriptionis. Species duelli eliciuntur per uerba posita in fine. Nam tres sunt species duelli. scilicet enim duellum propter odii exaggerationem aut propter gloriam impublium consequendam ex uiribus corporis. Aut propter purgationem alicuius criminis iniuncti. Propter igitur odii exaggerationem fit tamen aliqui dolo odio originaliter naturali et naturaliter singulari que apud naturales forma specifica appellatur inducuntur se inuicem exterminandos. Et de hoc duello non repio aliquid iure cautu sed ex principiis naturalibus hoc coenit ut statim prolequor et quia sensuali experientia hoc est comprobatum. fit secundo propter gloriæ in publico consequendam ut in publicis spectaculis cum duo uires corporis uariis modis ex pugnunt. De hac reperio iure cautu et ciuili et canonico lege ciuili. ff. ad l. aquilias. l. qua actione. §. si quis in colluctatione et. l. unica C. de gladiatores. l. xi. de re iud. l. 2. modis ff. de his qui non in sa. l. athletis. l. i. C. que res pig. ob. pos. l. specie non glo. insti. de heredi que ab intest. de. §. interdum. Lege canonica declaratur licet id fiat etiam propter purgationem de torneamentis per totum licet non sit proprie duellum sed pancracium ut. l. qua actione. §. si quis in colluctatione. §. allegata. fit et tertio propter purgationem. scilicet cum aliquis crimine alicui imponitur et ad probationem conuocans forte carens aliis probationibus uel etiam non carens offert se probaturu in uiribus corporis duello suscepto et puocatus sit se purgat ut etiam bobetur in re cautu de pugna in duellione ut. §. allui et. ii. q. v. quali per totam illam questionem et in lombard. ut. j. prolequor cum illud membrum discutietur. Tu pondera ea que dixi ut bal. in. l. ex hoc iure. ff. de iusti. et iure in §. octauo quero uis bal. in rubrica de edictis libertate tollen. in si per bal. in. c. i. de pace tenen. ubi dixit etiam quod tortura si permittitur nisi precedentibus iudiciis. Ita nec duellum et. vide dominum abb. post doc. in. c. i. insti. de clericis pugnantis in duello vide dominum anto. in. c. i. de corporis uicia.

Quo iure sit introductu duellum.

## Capitulum c. lxi.

Iuxta tertium uidelicet quo iure sit introductu duellum. Exponit singulas species duelli. §. positas explicare declarando.



circa singulas quo iure introducatur et quo iura inhiabantur. Et primo de duello pro ueniente propter odii naturalis ex ageratioz ubi sciendum qd hoc duellum est introductum iure naturali. Et sumitur ius naturale pro distinctu nature pueniente ex sensualitate ad aliquid appetendum ut sumitur ius naturale pro instinctu nature proueniente ex rationabili intelligentia que comparatur naturali equitate. et est tertius modus iuris civilis ut dicto ca. ius naturale. Est etiam inhibitum iure naturali continente precepta moralis legis diuine ut sumitur quarto modo ut ca. statim allegato. Est etiam inhibitz hoc duellum iure positio scz canonico et civili. Expedi enim qd per singula demonstratur. Dixi qd hoc duellum est introductus iure naturali ut sumitur pro instinctu nature proueniente ex sensualitate ad aliquid appetendum hoc sic demonstratur. Quicquid est productum cause in mediate alicuius effectus per consequens est productum illius effectus. Sed istud ius naturale originaliter inclinat ad sic appetendum est causa inductiva huius sensualis appetitus ad duellum ergo est causa duelli inductiva probatur maior. nam i primens sufficienter in causam cause productue sic remote imprimi effectum. ff. ad. l. in lia. de sic. l. nihil. C. eo. ti. l. si quis uocandi. l. di. studeat et ca. si quis midam de homici. de cetero in ca. pœbiter Probatur minus Nam ex naturali dispositione proueniente a principiis naturalibus et superioribus et inferioribus prouenit in hominibus varia appetitus inclinatio. Nam circumscripto quolibet merito ut de merito tibi naturaliter placebit quod mihi displicet et contra ex naturali dispositione quis circumscripto accidentali quocunq; diligit et odit. quilibet hoc experiri potest in seipso. Sed causa huius est propterea attentis corporibus celestibus. Nam si assiqui tempore natalium in momento natali habeant uniformem correspondentiam configurationem celestis et principia paterna confirmant in completionibus procul dubio sunt amacissimi naturaliter. sic se repugnantes hic inde sunt uicissim. Nam ab uniformitate debet insurgere uniformis effectus ut. C. ad. l. sal. l. ult. ma. ff. ad. Laquil. l. illud. Et tamē hic attēdēdū qd hec inimicitia naturalis inter hominem et hominem ut prædixi prouenit ex singulari naturali dispositione. que forma specifica apud natales nūcupatur. nam attenda naturali dispositione speciei humane inter homines debet esse amicitia propter uniformitatem complexionis relate ad formam humanam. Et propterea dicitur iura qd inter boies et homines est officium humanitatis hinc inde attendendum ut. l. si leuius in. ff. de leui. ex pos. et officio. ff. de neg. gest. et ibi glo. Et nō insurgit hoc ex naturali dispositione spēi qd hoc naturaliter non est reperire si quis re

corrat per species singulas animalium. Nam inter species singulas brutorū ē quōdam sed? pūctio nis et cohabitatio ppe uniformitatē pplexiois relate ad formam specificam. Sed inter speciem et specie quandoq; est extremus repugnātie introductum ad alterius extimatōem ut est in ancipite et aubus aucupabilib? murilega et murib? canibus et leporibus et de singulis puenit ergo ex quadam repugnātie individuali dispositione principioz superiorum et inferiorum effectum ut quilibet in se expif illa tamen dispositio non inducit regulam immediate duellum sed per medios actus ad quos ppe pueniunt. Sed tamen credo qd tanta posset esse repugnancia individualis dispositionis qd subito ad id puenirent et hoc puenit cum reguntur sola sensualitate et nullo rationis liberamine. Ex his apparet conclusum qd licet hoc duellum introductum est iure nās sic sumpto.

#### Capitulum c lxxii.

Estat uidere quod dicebas scdm circa hoc membrum dicebas entz qd hoc erat inhibitum iure naturali sumpto per rationali intelligentia et sic iure gētium et iure naturali pro ut continent pcepta moralis legis diuine et iure canonico et civili hoc luce clarius demonstrari potest incipiendo a lege diuina. Nam hoc est unum de pceptis decalogi. nō occides. Et sic lege diuina inhibitum et hoc regulare pceptum et sic det instantia de yepete. qui occidit filiam nec tamen non peccauit in lege diuina Iudici. xvi. c. xxvii. q. v. si nō bz.

Non obstat qd hec facta fuer spūsancti in ductione ut scribit Augus. in li. i. de ciuitate dei transumptiue habet in. c. si nō licet. xxv. q. v. Sic ergo lege diuina inhibitum est per illud pceptum. Non occides. Dentro. v. cap. Est etiam inhibitum lege canonica de homici. volunt. per totum. l. di. quasi per totum. xxiii. q. v. Si non licet. Est etiam inhibiti iure civili. ff. ad. l. cor. de sicca. et. C. per totum

Et si dicas illa iura inhihent homicidium voluntarium. Et sic hoc genus duelli ex quo illud peruenit. Si homicidium perueniens a duello introducto ex naturali dispositione si est voluntarium ex quo naturaliter est introducti. Ergo illa iura si astringunt hunc casū Solo est pmpa. Nam licet naturalis dispositio corpora hoc introducit cum naturales intelligentie dic tamen disponit contrarium cui obtemperandum est. Nam illa naturalis dispositio non necessitat ymmo manet liberum arbitrium. xxiii. q. iiii. de titia. rē. Nabuchodonosor et c. sicut enim de pe. di. ii. et phis in ethicis. ymmo et Astrologi hoc efficacius demonstrantes hoc idem asserūt vnde inquit burb. in tentiloquo in verbo decimo. Anima sapiens dominatur astris. Dic ergo licet dispositio corpora proueniat a naturali

principio tamē nāla intelligētia manet et in contrarium disponit. Dicitur possit de singulis generibus uiciorum moralium. Nam naturaliter singuli homines ad singula inclinantur uicia ut quidam superbi. Quidam luxuriosi. Quidam auari et sic de singulis. Nec tamē ex casantur quia pacifice necessitantur ut. c. nabuchodonosor xxiii. q. iiii. Hinc est quod dicit philosophus de anima tractu de motu quod inter appetitum sensitiuum et intellectuale est quandoque repugnantia. Nam sensitiuus tendit in unum intellectualis in aliud. Et si intellectus vincat sensum motus est rationalis et naturalis. sic si spera superior mouet inferiorem. Si autem e contra fiat est motus contra naturam. Et si spera inferior moueat superiorem licet enim motus sensus perueniat a natura eliminando in uicium tamen fit contra naturam nisi obtemperet sensus intellectui ut subditus domino suo et idem philosophus primo poli.

Est etiam hoc genus duelli inhibitorium iuri naturali et sumitur pro naturali intelligētia idem est quod ius gentium. hoc probatur sic. nam ex naturali intelligentia insurgit communis et naturalis equitas disponens in conseruationem uniuersi et inde habuit ortum ius positum immo et uerius loquar fuit ipsa met equitas iure naturalis aliquo addito uel de cre. to ne. l. ius ciuile. ff. de iust. et iur. Cum ergo naturalis equitas tendit in conseruationem uniuersi. ergo reprobatur hominis extinctionem que est tendens ad mundi destructionem. Nam quedam quorundam hominum extinctiones tendunt ad mundi conseruationem ut puta cum mali ex terminantur. Nam propter hoc interest reipublice ut puniantur ff. de publi. l. licitatio. ff. Laquil. l. ita uulneratus in l. de fideius. l. si arce de sentē. exco. ca. ut fame. Ex his aparte concluditur quod licet hoc genus duelli et inhibitorium iure diuino gentium canonico et ciuili.

### Capitulum c lxxiii.

De duello quod sit per gloriam quo iure sit introductum. et quo iure sit inhibitorium.

Estat uidendum de duello quod sit propter gloriam uictorie quod in publico spectaculo quo iure introductum est et quo inhibitorium.

Et dico quod genus duelli est introductum iuri naturali ut sumitur in suo significato scilicet quod pro instinctu nature proveniente ex sensuali tate. Sed est inhibitorium iure naturali sumpto pro iuregen. et iure diuino. Est etiam inhibitorium iure canonico et iure ciuili modificatio ne tamē ut statim subiciam. Declaremus singula ut dixi. Dixi quod erat introductum iuri naturali sumpto in secundo suo significato hoc probatur ut dictum est. 8. p. primo membro. Nam sensualis inclinatio pueniens a principiis naturalibus. In

ducit ad experientiam utrum corporali solum consequendam ergo inducit hoc genus duelli inde pueniens cum pducens causam pducit effectum ut inribus statim allegatis in superiori membro. Hoc tamen genus duelli est minus detestabile primo genere attento utriusque. Nam primum genus duelli fit propter extinctionem finaliter occasione inimicitie naturalis manentis. Hoc autem non fit necessario ad extinguendum sed uincendum quod contingere potest sine extinctione ergo hoc minus detestabile tamen actus hominum testatur et distinguuntur propter fines intentos. ff. de furtis. l. uerum et l. qui iniurie et l. qui ea mente xx. q. i. xi. c. l. xiii. q. v. quicquid de sentent. exco. cum uoluntate. Hinc est quod inquit philosophus. iiii. ethicorum qui fornicatur cum muliere ut pecuniam inde trahat non mechus sed auarus. Si igitur sine ponderato hoc minus testabile est illo. Confirmatur. Primum genus insurgit ex odio quod in se detestabile est si sine causa rationali pueniat ut in p. x. Et hoc genus duelli sine odio puenit. Nam et naturales amici duellabant in spectaculo ad finem glorie consequende. Confirmatur. Illud est minus detestabile quod minus distat a naturali equitate scilicet hoc secundum genus duelli minus distat a naturali equitate ergo probatur maior. Nam detestatio et approbatio actuum puenit a naturali equitate super qua fundantur inhibitorynes et pmissiones iuris ut. l. ius ciuile. ff. de iusti. et iur. et c. naturale. Prima distinctio. probatur minor. Nam hoc duellum non distat ab equitate iuris naturalis nisi quia ex illo legi posset hominis occisio qui actus tendit in destructionem uniuersi super qua equitate fundatur inhibitory leg. noue ciuilis ut. l. una. C. de gladi. li. xi. Cum tamen. l. ueteri non esset facta inhibitory quia sic se occidentibus remittebantur actiones ut. l. qua actio. §. si quis in collucatione. ff. ad. l. acquil. Sed primum genus distat a naturali equitate. Primo quia tendit ad necessariam alterius uel utriusque examinationem uel extinctionem. Distat etiam quia in fomite odii quod naturalis equitas abhorret si sine causa insurgat ergo hoc detestabilius. Confirmatur. Illud est detestabilius quod in totum nocet. Sed primum genus in totum nocet et in nullo prodest. Hoc autem secundum partim prodest. Maior clara. Nam actus de nominantur laudabiles et uituperabiles ratione laudabilitatis finis et uituperabilitatis est finis in talibus ponderetur. ff. de ritu nupt. l. si quis in senatorio. ff. de iure fisci. l. non intelligitur. §. si quis palam. ff. de iur. lege co. furiosus. Minor probatur. Nam primum genus fit solum propter examinationem mutam hoc nocet. secundum autem fit in publico spectaculo propter leticiam et recreacionem populi. et ob hoc ludus permittuntur et spectra. C. de specu. et serui. et leno. per totum t. excepta. l. si. li. x. et c. expen. ludorum. l.



una. est. greca constitutio. *Ex his inferat*  
hoc gen<sup>o</sup> duelli introductum iure naturali  
sumpto insecundo suo significato et ipsum for  
minus et detestabile primo genere.

### Capitulum c lxxiii.

Quo iure duellum per gloriam  
sit inhibendum.

Estat uidere quo iure hoc gen<sup>o</sup>  
duelli est inhibendum. Et dicebat  
ipsum inhibendum iure diuino iure gen.  
iure positio canonico vs et ciui  
li. Quod autem iure diuino sit inhibendum  
probatum. nam cum aliquo aliquo iure inhi  
betur etiam omne id per quod peruenitur ad  
illud. Sed iure diuino inhibetur homicidium  
ad quod peruenitur per hoc genus duelli. pro  
batur maior per .l. oratio. ff. de spo. ff. de fide.  
iust. l. cum. l. c. de usuria. l. eos in fi. c. de u  
soria rei in. l. fi. in fi. ff. de heredi. pe. l. si et si  
lege. §. Item ueniunt. ff. de mili. te. l. prima  
§. ut supra. Minor probatur de utro. c. viii.  
non occidat. Quod autem per hoc genus du  
elli poeniatum ad homicidium luce clarius est.  
Confirmatur ille actus iure diuino inhibetur  
qui est alienus a fonte caritatis. Sed hoc ge  
nus duellandi est huiusmodi ergo. Probatum  
maior. Nam caritas est fundamentum omni  
um virtutum et exclusio uiciorum de pe. di. ii.  
caritas est et c. ergo et quasi per totam primam  
partem illius distinctionis et sic alienum a ca  
ritate sapit naturam peccati. Et sic inhibetur  
iure diuino. Probat minor. Nam caritas est  
delectatio dei et proximi ut. c. caritas statim  
allegato. Et delectio proximi sicut suscipis in  
ca. proximos de pe. di. ii. Sed duellans i spec  
taculo duellat ut ulcat proximum. Et sic si  
diligat ergo inhibetur iure diuino. Di  
cebam etiam quod erat inhibendum iure gentium  
qui est tendens ad destructionem uniuersi.  
Hoc genus duellandi est huiusmodi. ergo ma  
ior probatur. Nam equitas naturalis super qua  
fundatur ius gentium tendit in conseruationem  
et augmentum uniuersi de iusti. et iure  
li. §. ius naturale et c. ex hoc iure eo. ti. ff.  
Probat minor. Nam hoc genus duellandi  
tendit in destructionem et extinctionem ho  
minis qui est nobilissima pars uniuersi. ymmo  
est finis productorum. ff. de usuria. l. in pecu  
dum. ergo inhibendum iure gentium. Confirma  
tur ille actus est inhibitus iure gentium qui  
est repugnans preceptis naturalis equitatis  
que est ipsum ius gentium uel eius fundamentum  
hoc genus duellandi est huiusmodi ergo ma  
ior probatur. Nam omne illud est iure gentium  
inhibendum contrarium cuius est preceptum  
et rationi eadem sit disciplina. ff. de iur. iur.  
allic. iuris. l. i. iusti. eo. ti. i principio xli. di. bo  
spiciolum. Probat minor nam hoc est uul  
de preceptis iurisperitorum quod quis non locu

pletur cum aliena lactura ut. l. nam natura.  
ff. de condi. inde. et regula locupletari de re.  
gul. iur. li. vi. Hoc etiam est unus precep  
tum iurisperitorum quod tibi non vis fieri alte  
ri non facias ut in principio decretorum. Sed  
hoc genus duellandi repugnat utriusque precep  
to ergo. Nam primo precepto repugnat i hoc  
Nam duellans querit gloriam de uituperio so  
ci proximi. et tamen sibi hoc fieri nollit. ergo  
inhibendum iure gentium. Confirmatur ille ac  
tus est inhibitus iure gentium qui est species  
belli iniusti. hoc genus duellandi est huiusmodi  
di ergo probatur maior. nam bellum iniustum so  
lum introductum est iure gentium. ut. l. ex hoc in  
re. ff. de iusti. et iure et l. hostes. ff. de capti.  
et postliminio reuersa. Minor patet nam  
hoc non est inductum auctoritate principis  
nec propter necessariam defensionem ergo.

Ex his inferatur hoc genus duellandi inhi  
bitum iure gentium. Sed statim predictis  
opponetur sic. hoc genus duellandi sit pp  
ter experientiam fortitudinis que fortitudo  
est uirtus moralis ymmo cardinalis. Sed  
uirtutes morales nec earum exercitia sunt i  
bibita iure gentium ergo non procedunt statim  
allegata. Quod autem hic sit actus uere for  
titudinis que est uirtus moralis. nam in hoc  
genere duellandi sit expectatio aggressus.  
Solutio pro euidencia huius contrarii est at  
tendendum quod reperitur fortitudo uera que  
est uirtus moralis et cardinalis. et illa nec op  
erationes sunt inhibita iure gen. Sunt etiam  
fortitudines similitudinarie de quibus prius  
in ethicis tractatu de fortitudine que simili  
tudinarie precipit actus aggrediendi et expec  
tandi sunt quinque. Nam aliqui aggrediuntur propter  
timorem qui fugientes de bello puniuntur.  
Quidam aggrediuntur propter experientiam  
artis bellandi ut stipendiarii et isti ut faciliter  
aggrediuntur sic faciliter fugiunt ut inquit  
prius ubi. §. Quidam aggrediuntur propter iram  
non deliberantes periculum. Quidam aggre  
diuntur propter spem non credentes subesse  
periculum. Quidam aggrediuntur propter glori  
am mundi consequendam quia fortes laudari  
solent timidi autem uicuperari. Iste sunt  
quinque fortitudines similitudinarie ad ueram  
fortitudinem que est uera uirtus moralis et car  
dinalis existit. Ad hoc autem quod sit uera  
fortitudo requiritur hec conditio uidelicet  
quod operetur scienter quis. Nam opus igno  
rati si est opus uirtutis quia prudentia debet regula  
re omne opus uirtutis. Secundo requiritur quod eligat  
Tercio requiritur quod eligat propter hoc. id est pp  
ter bonitatem et honestatem operis in se non  
autem propter aliquod extrinsecum. Quarto  
requiritur quod operetur firmiter et delectabili  
ter omnes similitudinarie de quibus supra. §.  
sic secundum plus et minus a uero omnes tri  
deficiunt in hoc quia operantes secundum il  
las non operantur propter bonitatem et honestatem operis. Sic in proposito

isti operantes ingrediendo et expectando hoc genere duelli hoc faciunt propter gloriam non autem propter bonitatem et honestatem actus in se nec etiam hic operantur circa quod debent. Hoc colligantur in his que tractat philosophus. iiii. ethicorum tractatu de fortitudine.

Ex predictis ergo inferitur hoc genus duelli diuinitate iure gentium. Dicebam hoc duelli genus inhibitus iure canonico et civili. Iure canonico clarum est tamen remitteretur quoad prohibitionem et permissiones tractat leg. diuine qua hoc duellum est inhibitum ut. d. deductum est. probat etiam rubrum et nigrum de pugna in duellione licet ibi ponatur clericus quia idem in omnibus. Melius probat titulos de torneamentis ubi decentibus in torneamento denegatur ecclesiastica sepultura. hoc ergo clare. Sed de iure civili aliter sit inhibitus hic aliquantulum insistendum quia lege uel. fforum uidetur permittum hoc genus duelli probat. tex. ff. ad. l. aquil. l. q. actioe. §. si quis in colluctatione sine in paucatio ubi apparet cessare actiones penalem contra accedentem in hoc duello ubi pugiles colluctantur. lege noua. C. inhibitus ut probat tex. C. de gladiato. l. una li. xi. qd dicemus ut legem ueterem esse correctam per nouam ut. l. non est noui. ff. de legi. hic puto aduertendum quod potest fieri pugna non cruenta ubi non tenditur ad sanguis effusionis ut cum aliqui brachiis colluctantur uel similibus modis et hoc genus colluctandi non reperio iure civili nec ueteri nec nouo prohibitu. ymmo iure nouo permittitur spectaculapropter populi recreationem ut C. de spe. et sti. l. leno. p. totum ti. excepta. l. lenonis li. xi. Et expens. ludorum per totum c. libro. Potest etiam fieri pugna tendens ad sanguis effusionem ut i. torneamentis et in duello ad mortem tendente et ista sine dubio iure nouo. C. e. inhibita. l. unica C. de gladiato. li. xi. Et ratio inhibitionis est tacta ubi probatum est ipsum inhibitu iure diuino et iure gentium lege aut ueteri apparere permittum poterit esse iure civili alias ius civile repugnabit iure gentium. In hoc contrario dubitavi. Sed ponderavi. §. si quis in colluctatione et mente quam credo fuisse legislatoris. Et pro euidencia pondera quod reperitur triplex permissio quedam est permissio simplex quedam est remittens et indulgens pena de qua habetur iiii. di. ca. denique. Nam ut ibi no. gl. ibi sit remissio pene non culpe. Sed permissio est que tollit impedimenta eius quod permittitur ut dicit tex. quod iudei permittitur habitare inter nos. Nam tolluntur impedimenta impedientia ne possint secundum eorum ritus habitare nobiscum ut xlv. di. qui sincera. Reperitur et tertia permissio que prestat iuramentum actui quod permittit finem quod dicitur quod ecclesie. aliqui permittit ecclesie occidi in iudicio seculari prestat iuramentum quia ipsam possessionem tradit ut. c. cum non ab homine de iudic. et c. ad fallariorum de cri. fal. et c. nouerit de v. signi. Secunda permissio quia impe-

dimentum tollit quod non faciebat prima ymmo solum penas remittebat. Tertia addit scilicet secundam quia prestat iuramentum permissio quod non faciebat secunda ymmo solum impedimenta tollebat. Nunc ubi applicando ad propositum si bene pondero. §. si quis in colluctatione ibi tex. remittit penam occidenti in colluctatione et ibi subditur ratio quia non sit iniurie causa erit ergo permissio prima pene remissoria sed nullibi reperio cantum iuramentum quod hoc duellum sit permittum secunda uel tertia permissio in hoc autem non repugnat quod ius gentium inhibeat et civilis lex penam remittat ut. d. dictum est. Ex his inferitur circa hoc genus duelli quo iure inhibitu sit et quo iure permittitur

Propter permissum et propter quid inhibitus sit duellum.

Capitulum c. lxxv.

Itaque quantum membrum quo querebatur propter quid sit permittum et propter quid sit inhibitum est respondendum de duello quod sit causa purgationis quo iure sit inhibitu uel permittitur et hoc proprie et stricte duellum apud vulgares nuncupatur. Et dico quod duellum est inhibitu iure diuino iure gentium et iure positio canonico indistincte iure civili regulari. Sed iure lombardo in casibus permittit ut subdam cum illos discutiam. Qualiter duellum hoc purgatorium inhibitus sit iure diuino probatur sic ille actus est inhibitus iure diuino per quem fit dei temptatio. Sed hoc duellum est huiusmodi ergo probatur maior per illud preceptum. Non temptabis dominum deum tuum. Probat minor. Nam tunc temptatur deus cum perquiritur aliquid contra naturam quod non est productibile nisi miraculo diuino sic est dicere in hoc duello purgationis. Nam naturale est quod fortior et ingeniosior uincat minus fortior et minus ingeniosum nec econtra fieri potest ordine naturali. Sed aliqui minus fortior et minus ingeniosus fortior iusticiam et per duellum quodammodo ut uictoria obtineat ut ipsius iusticia declarei. Sic ergo de temptari ut miraculum faciat. Confirmatur ille actus est inhibitus iure diuino quod est ad iuentus fabricante diabolo. hoc duellum est huiusmodi. ergo probatur maior. Nam nil comune dei ad diabolus lucis ad tenebras Minor probatur per ca. monomachii. q. v. et ca. consulisti ca. ca. et questione. Confirmatur ille actus est inhibitus iure diuino per quem innocens dampnatur. hoc duellum est huiusmodi. ergo probatur maior. Nam de omni uult dampnari innocentem xlii. q. ii. ca. que requirit per ca. signatib' de purg. uel ergo. Secundo dixi hoc duellum inhibitu iure gentium hoc probat sic Ille actus est inhibitus iure gentium quod repugnat non illi egrotate super quo fiduciam est ius gentium. Sed duellum purgatorium est huiusmodi ergo probatur maior. Probat minor.



Nam dicitur cōtas iur̄ gentium delinquentes puniri innocētes absolui ac in hoc bello contingit quādoq; e contra ergo inhibiti iurē gentium. Etiam repugnat illi precepto qđ tibi si vis in principio decretorum. Dixi ipsum inhibiti iure cano. hoc claret de pur. vul. per totū. de depugna. l. duello per ii. q. v. ca. conſuisti ulq; ad finem questionis et orationes possent reddi que reddite sunt ad probandū qđ sit inhibiti iure diuino cū ius canonicum imitetur ibibitiones et permissiones legis diuine. Confirmatur et per hoc pbat etiam qđ iure diuino sit inhibiti. Nam actus ille est inhibitus iure positio per quē sit exclusio obſeruantie iuris positui hoc duellū est h̄modi ergo probatur maior. Nam si obſeruantia est mandata lege positua ergo obſeruatia exclusio est inhibita. ut sicut propositū in xpo ſito sic opp. i. oppoito. ff. d. bis q. si sui l. ali. i. u. l. isti. co. in prin. xxi. di. hospiculi. Probat minor. nam iure positio introducte sunt actiones tam ciuiles qđ criminales et tota forma iudiciaria per quā proceditur ad iura pertinet declaranda ut. l. propterandiant ē. offeratur et. l. una. C. de lit. contel. et. l. prolatā C. de senten. et ca. qđ contra de proba. et uni cuiq; reddatur quod ſui xii. q. ii. ci. denotif. ſimā et. l. iusticia. ff. de iusti. et iure et. §. iusticia inſtit. co. ri. Sed duellando hoc obſeruatia penitus excluditur. ergo duellū ē iure positio inhibiti. Confirmatur ille actus est iure positio inhibitus per quē partibz iusticia conuegitur. et eisdē iniuria irrogatur Sed hoc duellum ē huiusmodi ergo probat maior qđ ad hūc finē promulgata ſūt iura positio diuinitas per oia principum ut. l. ult. C. de longi. tempo. preſcrip. viii. di. quo iure xvi. q. i. placuit. Probat minor nā hoc duellum aliquādo cōtingit innocentē ſuccūbere in duello et sic ſibi in iuriam irrogari et aliquando cōtingit nocente. obtinere et sic nō sit iusticia promoci. Ex his inferitur hoc genus duelli quod sit per purgationem criminis in periclonē ſore inhibiti iure positio canonico indistincte ciuili regulariter

Dixi etiam regulariter iure ciuili inhibiti hoc puellum fallit tamen in duobz casibus per. l. federici de pace tenenda et eius ulolatoribus ut puta si quis intra tempora pacis hominem occiderit et constet de homicidio puniatur pena capitali ut fractor pacis nisi per duellum probare noluert qđ hoc se defendendo fecit et est ille ſpecialis casus quo duellum est in rei optione. Alter casus si in tra tpa pacis vulnerauit pacē nisi p duell. probare noluert quod hoc fecerit se defendendo. Hii duo casus habentur De pace tenenda et eius uiolatoribus. lege una Primus in. §. si quis hominem infra pacem. Secundus in. §. si quis alium in eadem. l. In aliis autē casibus pmittitur iure lombardorum ut. j. p. lequer. Ex his concluditur

tercium principale membrum huius tractat<sup>9</sup> l. quo iure sit duellum introductū et quo iur̄ inhibiti distinguendo singulas spēs duelli

Per predicta ergo patet explicatio quart<sup>i</sup> membri uidelicet ppter quid inhibiti sit. et ppter quid pmisum. Nam duellum pmisū omni iure est inhibiti et nullo permisum et ppter quid. s. apparuit. Si de secundo et si de tertio singula tactu singulis membris ad hoc ppositum reducendo. Turpondera ga per pauum meum tangit late hic cum capis precedentibus quo iure Introductum sit duellum quo iure phibitum quo iure permisum. uide aliquid per bal. in. c. de pace tenenda in viii. col. bal. in rubrica de edititia libertate rollen. in si. ubi. dixit qđ legibus regulariter bellum est odiosum et. alt. et. l. i. C. d. gladiatōibus li. xi. uide glo. in. l. cum filius. §. ff. de le. il. Ange. inſti. de libertatis. §. si in ſi. uide bar. in. l. qua actione. §. si quis. ff. ad. l. aquilam uide bal. in. l. ex hoc iure. ff. d. iusti. et iure. Et qđ ſint phibita uide. d. abb. in. c. ii. de cl. pug. in duello. Et ibi ſubdit qđ ista duella fuerunt inuenta diabolo ludente. Idem dixit in. c. i. co. ti. in si. unde dixit abb. in. c. i. de purga. uulgarī qđ per ista duella deus ut temptari ideo phibita et in. c. ii. co. ti. in. ii. col. et. d. abb. in. c. iii. co. ti. uide. d. abb. post doc. in. c. i. de torneamentis et qđ non sit licitum ymmo phibitum uide ſantum thomam ſcda ſcda. q. xxv. uide. d. Cardin in cle. pastoralis de re iudi in v. q. uide zenge in exuagā. iohānis. xxi. que incipit quia in futurorū ubi concludit qđ duellum est phibitum et ius ciuile in hoc ſubicit iuri canonico uide. c. monomachiam. ii. q. v. et que ibi predicantur.

#### Capitulum c lxxvi.

In quibus casibus purgatorium duellum permittatur.

Ita quintus principale uidelicet in quibus casibus permittit duellum est uidendum de prima specie dictū est qđ nullo casu d̄ ſcda specie dictum est qđ iter De tertia specie nūc uidendū cū illa iura lombardē pluribz casibus permittat et ſolū circa tertia spēs inſtēdūz ulq; ad finē tractat. Querēdū est igitur quibus casibus hoc duellum permittatur. ul tra duos ſupra nominatos qui habetur in. l. federici de pace tenenda et eius uiolatoribus So. permittitur duellum in crimine leſe maiestatis cum quis alius impetit ſuper illo crimine ut i lombarda de publicis crimi. l. si qđ et est ultima. Sit ſecundo cū dicitur uxorem conſiliatam in mortem uiri ut i lombard. de p ſcilio mortis. l. si mulier et est ultima. Sic tercio propter iniuriam conturbatio comūnis ut si quis aliquem uocauerit conturbatū ut in lombard. de conuiciis. l. si quis Aliqñ sit et quarto casu de homicidio cōmiſo iter

trengnam ut in lombard. de homicid. l. liber b8  
 fit quinto in crimine pericidii 7 si dicat  
 cōmissum propter cupiditatem bonorum tē  
 sius ut in lombard. de pericidii. l. si. fit sex  
 to pugna de furto a seruo cōmisso qui est in  
 fuga si dominus uellet negare seruū fecisse  
 furcū ut in lombard. d. furcia. l. si quis

Et dicant quidam q̄ fuit hec. l. cōualce-  
 suma secundum quosdam. i. iniquitatis. uide  
 licet q̄ dominus teneatur pugnare pro suo.

Sit septimo in crimine adulterii ut si quis  
 accusetur adulterasse uxorem alterius in lom-  
 bard. de adulterio. l. iii. fit octauo si q̄ dicat  
 aliquis mulierem adulteratam 7 sic probare  
 uelit ut in lombarda. de iniuriis mulierum. l. ii.  
 incipit de iniuriis mulierum. l. puellam.

Item fit nono pugna si quis cōueniat q̄ ma-  
 lo ordine rem mobilem siue immobilem posside  
 at xxx. an. ut in lombard. de p̄scriptis. l. si quis  
 alium al. l. ii. fit decimo inter cōterarios  
 testes ut in lombard. de testibus si quis cū al-  
 tero quod procedit si productatur ab utraq̄  
 parte. Sin autem ab eadem pte tunc non  
 fit duellum. Nam aut actor probat 7 cōdēp-  
 natur. Aut nihil probat 7 absoluitur reus.

Sed si ab utraq̄ pte producantur 7 cetera  
 sint paria tunc fit duellum. fit undecimo  
 propter debitum paternum contra filium ne  
 gantem ut in lombard. qualiter quis se defen-  
 dat. l. si quis post mortem. Et uerus intellec-  
 tus illius. l. est q̄ intelligatur debitor ex ma-  
 leficio. fit duodecimo propter incendium  
 si agatur cōtra malefactorē ut in lombard. qua-  
 liter quis se defen. l. si quis alius. Non autem  
 fit si agatur contra consultorem ut in lombard  
 de illi consimili. l. una in si. fit tredecimo  
 pro adulterio ut si maritus dicat uxore suam  
 adulteratā esse ut in lombard. qualiter quis se  
 defen. x. l. si quis uxore. fit decimo q̄rto  
 si maritus suspicietur q̄ q̄ turpiter se habu-  
 erit cū uxore. Et intelligit lex turpiter rāgē  
 do ut in lombard. qualiter quis se defendat xē  
 si quis a mō. fit quinto decimo pro per iu-  
 rio ut in lombard. qualiter quis se defen. l. de  
 furto. fit decimo sexto etiam duellum p̄ i-  
 uctitura ut si quis dicat se primo inuestitus  
 7 de possessione eiectum 7 alicuius idem di-  
 cat ut l. idem de iustitia

Sit decimo septimo pro deposito negato.  
 ut si depositū sit ultra solidos xx. ut. l. si q̄  
 pro se. fit decimo octauo si dicatur q̄ q̄  
 cartā per uim extorsit ut. l. si quis dixerit in  
 lombard. q̄liter quis se defen. xē. fit decimo no.  
 p̄ libertate petita a suo. l. si q̄ fuus. Quidē  
 dicit q̄ illa. l. fuit canoniciana. Tu pōdera  
 q̄ dñs pauus me? hic loquitur multū sapiēter  
 7 hoc rāgit bal. in ti. de pace tenēda i ca. l. i  
 vii. col. cū se aliquid p̄ bal. c. de edit. liber tol.  
 in si. uide bal. in. l. negātea. C. de act. 7 obli.  
 inocen. in ca. cū olim de restit. spolia.

Inter quos iuri debeat duellum.

Capitulum c. lxxviii.

Itē sextum principale uidelicet  
 inter quos iuri possit duellū est  
 uidendum qualiter duellū purga-  
 torium inter principales regulār  
 fieri debeat. Et dico q̄ hoc habet regula tēto-  
 iure lombardo quo duellum p̄mittit in casib⁹  
 supius narratis q̄ duellum sit inter principa-  
 les. Sed illa reglā fallit in octo casibus. Pri-  
 mus si iuuenilis etas impedit. Secūd⁹ si etas  
 decrepita. Nam in ea labor 7 dolor. Terti⁹  
 us si infirmitas aliquē duellare p̄hibeat. Itē  
 tres casus habentur in lombarda qualiter q̄  
 se defen. xē. l. quacūq̄ lege 7 de p̄ciō. l. ultia  
 Quartus est si fuus qui est in quasi possēsiōe  
 fuit utis p̄clamat in libertatem. Nam tūc  
 dominus duellat p̄ campionem ut in lombard.  
 qualiter quis se defen. l. si quis fuus p̄pter ap-  
 petitum. Quintus si ecclesiastica sit p̄sona  
 puta clericus uel comes causas habent ad in-  
 uicem uel cum aliis tunc pugnant p̄ campio-  
 nem ut in lombard. qualiter quis se defen. l. si.

Sextus ubi mulier accusetur d̄ adulterio  
 ut in lombard. c. ti. l. si quis uxorem. Sep-  
 timus si testes actoris sunt contrarii testib⁹  
 rei tunc testes actoris debent assumere unū  
 campionē 7 testes rei assumere aliu ex testi-  
 bus met ut in lombard. c. ti. l. si quis cum altero

Octauus Si seruus accusetur de furto in  
 lombard. de fur. l. si fuus dominum de furto  
 bodie tamen de consuetudine p̄mittitur q̄li-  
 bet habere Campionem.

Capitulum c. lxxviii.

Qualiter fiat duellum.

Itē septimum principale scilicet  
 qualiter fiat duellum est uidēdū  
 7 sic premitto q̄ duellum est re-  
 ductum ad instar iudicii contē-  
 tiosi. Nam sicut in iudicio contentioso sūt  
 actor 7 reus iudex instis causam instruē-  
 tia p̄ que largo modo sumpta p̄ quibuscūq̄  
 causam instruētibus ut. l. l. ff. de fide instru.  
 sit ueritatis declaratio ut seratur diffinitia  
 sententia. Sic in duello sunt actor 7 reus.  
 ut puta puocans 7 puocatus. iudex instis ut  
 pote arma quibus se inuicem pcutiūt. Nā  
 sicut in iudicio contentioso quis aliquando  
 conuincit testibus scripturis 7 confessionib⁹  
 ut de testi. spo. c. cum ad sedem. Sic in duel-  
 lo quis aliquando armis conuincit corporali-  
 bus ut sicut in primo fit q̄ sic cōuictus 7 in  
 casu condemnationis sic a simili conuictus  
 in hoc. Ad similitudinem igitur iudicii cō-  
 tentiosi querendum est de hoc iudicio. l. duel-  
 lari. Pondera in simili ea que dixit bar. in  
 l. i. C. de lit. contestata. in. li. col.



## Capitulum cxxxix.

An iuramentum de astu inter duellantes sit prestandum et per quem.

Primo quero An iuramentum de astu sit prestandum. Et an per provocantem et provocati. An per alterum et per quem. Et iuramentum de astu de hoc iudicio idem est quod iuramentum de calumpnia in iudicio contentioso fore civilis vel ecclesiastici. et videtur quod utraq; iurare debeat. Nam iuramentum de calumpnia prestatur in iudicio contentioso per actorem et reum ut. l. i. et. ii. C. de iuramento calump. et auct. principales eo. ti. ex. et. per totum. Ergo hic a simili cum sit eadem ratio et sic eadem iura dispositio. ff. ad. l. aquil. l. illud. C. ad. l. falci. l. ultima de consti. tras. acto cum si. Solutio hic fuerit opi. uarie attento iure lombardo una fuit opi. et fertur quod fuit mantuanorum quod in hoc iudicio duellari prestatur sacramentum de astu. ab utroque tamen ab actore quod a reo. Et sic secundum eos corriguntur omnia iura loquencia de astu. non prestando. adducunt quod habentur in lombard. qualiter quis se defendat. l. metho.

Sed illa lex habet quatuor intellectus. unus quod intelligatur in testibus contrariis ut potius fiat duellum quod perirent. Secundus quod intelligatur in duobus contendentibus se possidere ut potius duellent quod deberent. Tercius quod intelligatur in eo contra quem iuratum est quod furtus commisit. et ille uult iurare per trarium. Quartus cum duo litigant coram iudice et unus iuravit delato iuramento et alter uult iurare contrarium. Horum sententia reprobari uidetur quod non est hoc casus iure primo contrarium ex parte rei. ut solus actor iuret ut in lombard. qualiter quis se defendat. l. si quis alium astu. Fallit ubi fit duellum propter contrarietatem testium ut in lombard. de testibus. l. si. et qualiter quis se defendat. l. si quis cum altero. Secunda fuit opi. car. beneuentan qui uoluit distinguere an quis ueniat ad duellandum in causa ipsius tota inter contingente. aut propter aliena. Aut principaliter aliena. secundario sua.

In primo casu utpote cum quis provocat aliquem super furto vel incendio sibi facto ut ad ulterius uxoris sue. tunc refert aut provocando ipsam dicit tu commisti. aut dicit suspicio quod commiseris primo casu debet iurare res esse ita esse. secundo casu debet iurare quod iustam habet suspicionem. et cum provocat ratione suspicionis debet adicere causam suspicionis ut pote quod ipse uiderit locum cum uxore sua et sic de aliis. Qui autem provocat ad duellum cum causa aliena non propter aliquid simile contra se sed contra illum ut pote super crimine cum provocat super crimine lese maiestatis tunc cum accedat ut testis debet iurare sic esse ut prestatur iuramentum

testis ut. C. de testi. l. ius iurandi de testi. et. tuis et. c. cum nuncius cum sy. et dicit in reo ut iuret rem sic non esse. Nec opi. quoad sacramentum rei reprobatum ut. d. prima. Tertia fuit opi. et fertur fuisse papientis uidelicet quod ex parte rei et provocati nullum prestari debeat.

Sed ex parte actoris de actore probat in lombarda qualiter quis se defendat. l. si quis astu. De reo probat. Nam reus tenetur ad alterum duorum vel pugnet vel renuat et condempnetur. Sic igitur iuramentum pro parte rei nihil operatur et sic ut supradictum resecundum ut. l. amplius. ff. in rebus et actionibus. C. de appell. l. non cogendum. ff. sabinus. ff. de pcur. Quarta fuit opi. et fuit cuiusdam alberti qui uoluit dicere quod actor tempore iurat preterquam in crimine lese maiestatis et testibus contrariis et inuestitura predii. In reo probat cum aliis preterquam cum papientibus et hoc credo in actore utrumque quod regulariter preterquam in casibus supradictis est ratio ut compellatur reus se purgare non precedente aliquo iudicio contra eum primo uolunt iura ad minus procedere infamiam et deficientibus probationibus exponitur purgationi de purgatione canonica. il. q. iiii. per totum de accusat. qualiter duo ut ibi nota. Sic igitur iure lombardo quo duellum permittitur in casibus. d. enumeratis ad minus ex parte actoris prestat iuramentum et iuramentum debet esse eodem forme provocationis ut provocat de rei existeretia sic etiam iuret ut etiam contra notatur in eo iuramentum calumpnie et veritatis ut unum de credulitate aliud de veritate ut dixit dominus Karolus.

## Capitulum cxxx.

In reo autem non concipio rationem necessitatis iuramenti.

An dato campione nulli parti in casibus a iure promissis sit licitum dare alteri.

Secundo quero nunc quid si alicui partium detur campio in casibus promissis a iure lombardo qui sunt octo ut. d. notavi an tunc liceat alteri parti dare campionem. Solutio. Hic fuerunt opi. varie. Aliqui dicunt quod sic allegant quod habetur in lombard. qualiter quis se defendat. l. quocumque. Fallit in casu ubi servus contendit contra dominum. Secunda fuit opi. quod alteri parti non liceat tunc est ratio.

Nam lex tunc in tribus casibus permittit ergo denegat in aliis. ff. de leg. l. ius singulare ff. ad municipal. l. i. ff. sol. mat. l. si cum duobus C. de pcur. l. marito de translat. paela. inter corporalia cum similibus. Ego credo hoc ponderandum quod in hoc refert hoc iudicium duelli a iudicio contentioso. Nam in iudicio contentioso regulatur quis per alium litigat et propter hoc inactus est procuratoris usus. ff.

te perat. l. i. r. l. nua. Sed in duello regulariter solum per se r in hoc equiparatur iudicio criminali in quo non intervenit procurator nisi ad causas cause allegandas. ff. de pu. ludi. l. p. §. qui ad crimen. r. l. servus quoque §. publico. ff. de procur. r. ca. licet r. ca. nemi ens de acu. Et est ratio quod in personam procurator non potest ferri condemnatio sententia. quod innocens in personam domini ratio. quod absens. ff. de penis. l. absentem. Sic directio in duello. Nam in duello duellantes ad probationem personarum tendunt ut ex hoc elicatur veritas per hoc genus probationis r sic regulariter non intervenit campio preterquam in casibus premis. Si igitur emergat casus dandi campionis ex parte unius r non emergat ex parte alterius. ille solus dabit campionem. Si autem utrique emergat casus utrique dabitur nisi dicas propter equalitatem bincinde servandam ubi licitum uni det alteri ut. l. terminato. C. de fruc. r. lit. expen. de mut. peti. l. i. r. per totum. regula non licet de regul. iur. li. vi. r. hec sapit equitatem sed prius dictum verius de rigore iuria.

#### Capitulum c. lxxxi.

An campiones dentur equaliter ubi bincinde dandi sunt.

Terio quero qualiter in casibus bincinde cum conceditur capio fiet ipsorum datio r concessio.

Solo. Dic pondero quod sicut per advocatos in foro contencioso causa perorat sic per campiones in iudicio duellari. Et sic in foro quod sicut in iudicio contencioso fieri debet equa advocatorum distributio ut. l. postulandum. C. de postu. Sic ubi bincinde fit campionum concessio fieri debere equa ipsorum distributio. In principalibus autem duellantibus non est ponderanda equalitas cum causam propriam propriis viribus corporeis ipse ad exitum producant.

An quilibet admittatur ad campionem.

#### Capitulum c. lxxxii.

Quarto quero an quilibet admittatur per capione. Solo ut dictum est. Dic equipatur campio advocato. Sicut ergo quilibet admittitur ad postulandum nisi sit ini prohibe ut. l. i. ff. de postu. Sic quilibet admittitur ad officium campionatus nisi repellatur a iure. Repellitur autem fur ut in lombarda qualiter quis se defendat. l. campaniones. Et est ratio quod in famis. ff. de fur. l. non potest. Et sic siue combit presumitur ratione proprii delicti siue cubere r alii criminosi gravibus criminibus heretici ratione predicta.

#### Capitulum c. lxxxiii.

In cuius electione est duellum.

Quinto quero in cuius electione est duellum. Solutio regulariter in electione actoris sicut dicimus in iudicio contentioso. hoc habetur in lombard. qualiter quis se defen. l. si quis amō. Fallit in crimine lese maiestatis ubi ex necessitate cogitur duellare. Et si aliquis dixerit agam ut in lombard. de pu. cri. l. ii. r. si iniuriis mulierum. l. ii. Pondera etiam que predicavit bal. in. c. i. si pace tenenda i. ix. col.

#### Capitulum c. lxxxiiii.

Qualiter debeat ordinari.

Extio quero qualiter debeat ordinari duellum. Solo iure non est cautum sed consuetudine fuerat quod elizatur locus amplius in civitate vel extra qui locus circumclaudatur cordis. Ita nullo banno nullus audeat intrare preter duellantes nec audeat tumultum facere propter quem altera pars offendi posset. Et iudex erit ibi in loco ex quo videre possit utrique duellantium r qualiter unus alius recipiat ut finaliter iudicet in duello. An quis succubuerit. Pondera ea que hic dicuntur per prozum meum quia sunt memoria digna r verum predicat dicens hic servari consuetudine. Nam ita vidi observari ymole.

#### Capitulum c. lxxxv.

Quibus armis debeat duellari.

Eptimo quero quibus armis debeat duellari. Solutio iure lombard. permittuntur spata fustes ut in lombard. de testi. l. si quis cum altero r qualiter quis se defen. l. mentio r hoc debent esse equalia r a iudice preitari.

#### Capitulum c. lxxxvi.

An si arma frangantur vel cadant debeant alia dari vel sublevari.

Octavo quero quid si arma sen fustes unius duellantis frangantur vel cadant. An debeant alia dari. Et videtur quod sic. nam dicit rex tus quod pugna debet fieri cum fustibus r scutis ut in lombard. qualiter quis se defen. l. mentio r in lombard. de testi. l. si quis cum altero sed nisi alia darentur non fierent cum fustibus ergo. Confirmatur. Nam fustes in duello equiparantur testi. r instrumentis in iudicio contentioso. sed in foro contentioso fit



multiplicatio pductionis testium 7 instrumentorum etiam si aliquorum dicta fragitur ante publicationem 7 noticiam dictorum ut in aut. de testi. §. si uero de testi. firmitatis 7 cle. de testi. c. ti. Quidam hoc tenet in frā gente secus si cadant quia tunc debet imputari fortune. Alii dicunt q̄ in nullo casu sunt prestanda sed imputari debet fortie sue. Alii dicunt stari consuetudines. Sup hoc ego credo opi. scđam fore ueram. s. q̄ nō sint alia prestanda siue cadant siue frangant nisi aliud habeat consuetudo que operari pōt effectum ut dicte lex. ff. de legi. l. de quibus. C. que sit lon. consue. l. ii. xi. di. consuetudis i. di. consuetudo. Et est ratio. nam in duello ut dixi in principio tractatus queritur aliquando q̄ contra naturam ut q̄ min⁹ fortis 7 minus industrius uincat fortiozem. 7 magis industrius quod aliquando contingit casu incidente ergo uterq̄ duellantium dimittendus est subiectioni casui quibus se libere composuerunt alias transirent. nā duelli ad purgationem indicti. Confirmatur nam si diceremus dare noua arma ubi caderent. sic a simili diceremus duellantem cadētem subleuari quod est absurdum. Nam ppter hos casus aliquando contingit potentior rem succumbere 7 in hoc monstratur iudicium diuinum.

#### Caplm c lxxvii.

Quis prius percutere debeat.

Uno quero quis in duello percutere debeat. 7 uidetur q̄ p̄uocans. nā hoc iudicii duellare est si milis indicio contentioso ut. §. tactum est sepius. sed in iudicio contentioso actor p̄rio porrigit libelli reo 7 postea re⁹ porrigit responsiones ut in auten. offeratur C. de lit. contest. 7 ca. i. de libelli obla. ergo a simili p̄uocans primo percutiet p̄uocati In contrarium uidetur q̄ reus fauorabilior est ut. l. Arius. ff. de act. 7 obli. 7 regu la fauorabiliores. ff. de regulis iuris. Regule in penes de regulis iuris li. vi. Sol credo primam partem ueram nec obstant allegata in contrarium q̄ illa iura loquuntur in finib⁹ iudiciorum cum si restat nisi infinitima sententia q̄ tunc fruendum ē reo. Sed circa principia fauendum est actori ut. l. si quis in tentione ambigua. ff. de iudi. l. i. inter scripto lantē. §. i. ff. de uer. ob. uel dici potest q̄ hic non est seruandus ordo sed locus est preuentioni uel etiam concursui. Pondera quia hic que dicuntur per proxiuum meum iure nō probantur statim ergo ad consuetudinem qua mediate seruaretur ultima opi. proxiui mei. 7 ita uidi seruari in contingentiis facti.

#### Caplm c lxxxviii.

An si terminari nō potest uno die alio potest finire. Huc maria gracia plena do.

Ecimo quero. An si duellum terminari non possit prima die possit ad sequentem diem deferri.

Solutō. Dico q̄ sic hic enim do nec finiatur instaurandum est. Tu pōdes dicta per bal. in. c. i. in ti. de pace tenen. in ix. col.

#### Caplm c lxxxix.

An succumbens debeat in expens condempnari.

Undecimo quero. Nunquid succumbens in duello debeat in expens condempnari aduersario. Soto.

ad similitudinem iudicii contentiosi quo uictus uictori condempnatur in expens ut. l. pperandum. §. sin autem. C. de iudi. l. i. l. terminato. de fruc. 7 lit. expensis 7 c. finem de dolo 7 contuma. 7 c. calumpniar de pens. Posset sic in duello dici uictus uictori. 7c. Tu pondera q̄ forte non esset leue dicere q̄ non debeat in expensis condempnari maxime cum iurauerit de astu ut supra tetigit dominus paup⁹ meus 7 fuerit quasi cōdempnatus ex p̄sumptionibus. s. ex duello

Nam iudex debet esse mitior quando pceditur ex p̄sumptionibus fm bal. in aut. generaliter. C. de epi. 7 clerici. in. iiii. col. ergo.

#### Caplm. c lxxx.

An succubens puniatur pena talionis.

Uodecimo quero. An p̄uocans in duello succumbens puniatur pena talionis. Soto. Ad similitudinem iudicii criminalis contentiosi ubi imponitur pena talionis accusati succumbenti ut. c. super bis de accusac. 7 c. licet. c. ti. 7 l. si. C. de accusat. fit in duello cum duellatur ppter crimen puniendum ad publicam uindictam.

#### Caplm. c lxxxxi.

An succumbens possit de eodem accusari in iudicio contentioso.

Et uodecimo quero. An p̄uocans ad duellandum propter crimen succumbens 7 condempnatus possit de eodem crimine accusari in iudicio contentioso. Solutio. Posset dici q̄ cum iure ciuili duellum purgatorium non ap probatur ymmo penitus improbetur ut. l. una C. de gladiato. li. xi. 7 iur canōico ut d̄ pugna in duello 7 purg. vul. p totū 7 ē t̄ p̄i. Ecce 3 d̄. fuit tactū hec diffidō. l. f̄phata peret studi cum iuridice disensionem. Et sic non obstat q̄ de delicto ciuilem sepius non sit querendus

ut. l. licet in fi. ff. nau. cau. sta. 7 ac. de his de  
accusatio. q. illa iura loquuntur cum prior ex  
aminatio 7 discussio sint iuridica. Et sic in  
fertur q. absolutoria lata in duello non parit  
exceptionem rei iudi. accusare uolenti in iu  
dicio contencioso. Hec uera nisi consuetu  
do regionis aliud induceret ut uidelicet fer  
naretur ius lombardorum secundus cuius di  
spositionem persecutus sum hunc passum. Et  
sic limitate sunt solutiones precedentium q.  
stionum. Tu pondera q. ea que hic narratur  
per dominum prozum meum decidunt que  
que per eum tanguntur supra proximo capi.  
quali non sit locus in inscriptioni nisi ex con  
suetudine seruaretur ius lombardorum.

### Capitulum c lxxxv.

An desistens a duello incidat  
inturpillianum.

Uirto decimo quero. Nunquid  
prouocans ad duellum propter  
crimen publicū desistens a duello  
incidat penam turpill. Et uidet  
q. sic ad instar criminalis iudicii contentiosi  
ut. l. i. §. si quis autem. ff. ad tur. Soli iure col  
li pcedez q. cū iu. col. lit. pbatū hoc iudicii  
ut. §. 3. quo iure pmissi posset dici ex eadē  
equitate ipsum puniendum. 7 dico arbitrio  
iud. cum nō sit iure expressa de officio de le.  
c. de causis in fi. ff. de liberan. l. i. In penam  
enim turpill. non credo ipsum incidere cū pe  
ne sint restringende ut. l. cum quidam. ff. de  
li. excep. 7. §. pene. de pe. di. i. regula in peis  
de regu. iuris li. vi. hec ut dixi iure lombar  
do procedant. Nam iure comuni recedens a  
duello non punitur ymmo talis legi ob tem  
perat 7 prolequens facit contra leges.

### Capitulum c lxxxviii.

An possit desistere cum licetia iudicio

Uirto decimo quero. Nunquid  
prouocans ad duellum iure lom  
bardo possit desistere cum licen  
cia iudicis apparet q. sic ad in  
star accusantis impetrantis abolitionem. ff.  
ad turpillianum. l. abolicio 7. l. si quis inter  
ueniente 7. l. demicianus. C. de abolicio p  
totum. Solutio iure comuni hoc claret  
quia sine abolitione potest 7 bene facit iure  
lombardo. Credo etiam q. iudex ex causa q.  
credere potest ad instar accusatoris ut supra  
allegatum est. Tu pondera q. idem tenuit  
bal. in capitulo primo de pace tenenda.

### Ultimum capitulum.

An prouocans desistere possit ante  
litem contestatam sine pena.

Exto decimo quero. An prouo  
cans ad duellum desistere possit  
sine pena ante litem contestatam. 7  
cum etiam quero quando propo  
sitiōe sicut i iudicio pteret. i. duello lis dicat  
contestari. Et uidetur q. ante possit sine pe  
na desistere. nam ante lit. contest. non dici  
ga agere s. agere uelle rē ra. ba. l. hoc apli. er  
go an desistere nō poterit. Cōfirmatur nā. ff.  
lit. contest. desistenti pcur. ff. de in ius vo.  
l. q. uis ergo. Cōfirmatur p. l. si metu. C.  
de adulter. 7. l. miles. §. locer. ff. e. ti. 7. l. q. si  
tum. ff. ad turpill. In contrarium facit. l.  
In senatus. §. qui post. ff. ad turpill. ubi pbat  
tex. q. desistens ab accusatione ante lit. con  
test. incidat in turpill. Idem pbat. l. per. C.  
de calump. Solo. Hec questio presupponit  
decisionem alterius questionis. i. quando lis  
ppositionaliter dicatur contestari in hoc iu  
dicio duellari uidet q. post unam pcurfionez  
actoris 7 aliam rei quia in iudicio contencio  
so sic sit contestatio per petitionem 7 contra  
dictionem secutam ut. l. rem non nouam. §.  
patroni. C. de indi. 7. l. una. C. de lit. contel.  
7. l. una. e. ti. e. x. Sed prima percussio ha  
betur loco libelli. Secunda que fit a reo  
est contradictio ergo sic fit litis contestatio.  
Contrarium crediderunt uidelicet q. fiat li  
tis contestatio cum puocat asserendo quod  
crimen cōmiserit 7 ille negat q. hoc sit uerū  
patet. Nam post litem cōtest. prestatur sacra  
mentū de calumpniis in aut. ut liti. iu. in me  
lit. in prin. 7. l. li. C. de iura calump. Sed  
duellantes post hanc vrbalem puocationez 7  
contradictionem iurant v. astu ut supra dic  
tum est. Incipit ergo duellum a vballi puo  
catione sed percussiones habentur loco pbat  
onum p testes 7 instrumenta que sunt post  
lit. cont. ut lit. non cont. per totum. Et sic  
modifica solutionez questionis qua quesui q.  
primo percutere debeat. Hac solutione p  
missa principalis questio incidat in questōem  
illā. An pena turpill. uendicet sibi locum ante  
lit. contest. 7 glo. sunt contrarie vna est in. l.  
miles. §. locer. ff. de adult. 7. fuit bu. 7 tenet  
q. non incidat. Alia est in l. i. C. ad tur  
pill. Et fuit azonis qui tenet q. incidat 7  
illam credo ueram p. l. infenatus. §. qui post.  
ff. ad turpill. Et per autentica qui semel. C.  
quomodo 7 quando iudex. Tamen dicit  
pe. q. accusator penitere potest anteq. reus  
citatus ueniat. Sic intelligit. l. quesitum  
ff. ad turpill. Et simili modo habetur solutio  
pmissa questionis loquendo de iure lombar  
do ut supra. Tu post tractatum pondera q.  
in federici constit. sub rubrica de prestando  
iuramento a campionibus cauetur q. postq.  
campionēs circum pugnatorum fecerunt  
prouat est mortis ingressi corporalia subeant sa  
cramenta iuxta probabilem credulitatem eo  
rum credunt domino pro quibus pugnam in  
trauerint ueritatem fouere 7 lecu omni sta



de pugnaturis pro dominia suis nec possunt  
paci si q non dimicabunt tali t tali modo  
puta dentibus. Sed ad confusionem alterius  
alter ex toto posse conetur de quo uidet bal.  
in. c. i. de pace tenen. in. x. col. Et pōdera  
quia in sequenti. c. ponitur de pena falsi cam  
pionis t q dominus uictus p penam falsi cam  
pionis pōt in integrum restitui sicut si esset  
uictus per falsos testes. Item q falso campio  
ni qui scienter deciderit debet mutilari ma  
nus iure comuni deberet puniri pena qua  
fuisset punitus reus de crimine intentato. l.  
l. post prin. ff. de sicca. Item pondera qz  
fridericus in quadam constitutione que in  
cipit consuetudinem. dicit q si miles fuerit  
is qui ad pugnam impetitur et eques se uolue  
rit defendere. Aduersarius eius qz miles si  
non sit eques simpliciter eum impugnet.

Et econuerso si pedes fuerit qui defende  
re nititur licet is qui pugnam obtulerit fue  
rit miles. non ut miles sed ut quilibet pugil  
alium locustum impugnet. t hoc uidetur p  
bari per textum ibi defendentis. Nam debet  
esse electio qualiter melius se defendere ua  
leat. Et pondera qz eodem in loco osten  
ditur q habens duos oculos si provocat ad  
duellum habentem unum oculum tantum de  
bet unus oculus ei claudi. Et idem indigi  
tis t aliis in membris ut ibidem. Et pon  
dera q ille qui tetigit sexagesimum annum  
uel est minor xxv. ann. pro se pugnare mini  
me tenetur. Sed pro sui defensione possz po  
nere campionem. Uide bal. in ca. primo in ti.  
de pace tenenda. Paulus de Lignano iu  
ris utriusqz Doctor.

Explicit tractatus de Bello Compila  
tus per me Johanne de Lignano minimi iu  
ris utriusqz Doctorem In studio Bononien  
si. M. ccc. lx. precedente forti exercitu con  
tra Clauitatem qui causam dedit tractatui ut  
Scolaribus causa foret exercituli Doctorum  
autem subiceretur correctioni. Deo gratias  
t uirgini gloriose eius Matri sanctissime.  
eius sponse Katherine totiqz celesti curie.

AMEN.

## TABULA.

### TRACTATUS. JSIE.

de bello prima sui diuisione di  
uiditur in tres partes princip  
pales Quarum ultima in sex  
tractatus diuiditur t subdi  
uiditur prout tibi per tabulam istam clarius  
demonstratur rubricellis suis suo ordine col  
locatio

Prima pars principalis. Quid sit bellum.  
t qualiter describatur.

Secunda pars principalis de diuisione  
belli t qualiter diuidatur.

Tertio t ultima pars principalis ponit es  
dinem tractatum. Et diuiditur in sex prin  
cipales tractatus.

Primus tractatus de speciali bello celesti.  
Qualiter bellum speciale celeste est inuentū  
t mensura specialis humani belli de naturali  
deductione spūalis belli corporum celestium  
ad bella terrestria.

Qualiter secundum Astrologos t natu  
rales phōs necessario sit dare bellum.

### Secundus tractatus.

De spūali humano bello. fm theologiam.

De spūali humano bello fm moralem phōs

### Tertius tractatus.

De uniuersali corporali bello. Et iste diui  
ditur in sex tractatus.

Primus Qualiter iure gentium habuerit  
ortum bellum uniuersale corporale.

Secundus tractatus tertii principalis. l.  
quibus liceat bellum indicare uniuersale.

Quibus primo t principaliter t quo iure  
t contra quos bellum liceat indicare uniuers  
sale.

An aliis a prin. liceat bellum indicare uni  
uersale.

An bellum motum p Impatorem contra  
ecclesiam sit iustum. Et an teneantur subditi  
in hoc obtemperare.

Quid econtra iuris sit cum Papa bellum  
mouet contra Impatorem.

Tertius tractatus tertii principalis. l. que  
sunt aggregatus belli.

De legione t cohorte t q t quot necessario  
in eis requirantur.

Qualiter milites se habere debeant t cui  
obediant t a quibus abstinere pceptum.

Que ptineant ad officium ducis belli.

Qualiter uarie puniuntur milites p ut ua  
rie delinquit.

De fortitudine t ipsius natura t que for  
tudo dicatur moralis t que nō. que bellus  
ducit ad finem rectum t que non.

An fortitudo sit uirtus cardinalis  
vii. t generaliter uirtutes iiii. principales di  
cantur morales.

Quid sit uirtus.

De triplici specie boni et generaliter .iii. cardinales virtutes eliciantur a bona.

Quo et quiter quis in bello potest dici fortis Quia sit principalior actus fortitudinis.

Quot generibus fortitudinis quis utatur in bello.

An fortis in bello debeat potius expectare mortem quam fugere.

An milites una cum comitibus suis viriliter in hostes prorumpens et ipsos totaliter commutet frangens contra mandatum iudicis sit capite punit.

An duci bello capto ab hostibus sit uenia concedenda.

Quartus tractatus tertii principalis. Et diuiditur in duas sui principales partes.

Prima pars. scilicet teneatur ad bellum accedere.

An a domino moto iusto bello teneatur uasallus ad bellum accedere propriis expensis.

An subditi uni baroni mouenti guerram contra regem suum teneantur iuuare ipsum abronem contra regem.

An subditi uni baroni mouenti guerram altero baroni teneantur ipsum primo uel regem mouentem guerram alteri regi iuuare utriusque mandato uno concurrente recepto.

An uasallus non ligius duorum dominorum utrumque uel alterum et quem iuuare teneatur.

An uasallus teneatur iuuare dominum contra patrem uel pater contra filium.

An ciuis duarum ciuitatum teneatur iuuare unam contra aliam.

An uasallus uocatus a domino teneatur ipsum sequi in partibus ultra marinas ad pugnam contra barbaros.

An serui ubique teneantur legem dominum ad bellum.

An liberi uocati sequi teneantur patronum ad bellum.

An agricolae uocati teneantur sequi dominum ad bellum.

An confederatos seu colligatos possit dominus prouocare ut ipsum iuuent in bello.

An subditi et qui ratione iurisdictionis tantum teneantur ad bellum accedere.

Si pars secunda de personis non astrictis ad bellum libere accedentibus diuiditur in sex principales partes.

Prima pars de libere accedentibus.

An libere accedens obliget sibi illum in seruitium uadunt si dampna inde patiuntur.

An comodarius teneatur comodanti et quae arma in bello depediti resarcire.

An prouocans contra spoliatores prouocati ad bellum accedentis agere ui bono rap. uel furti.

An non uocati sed proprio motu accedentes ad bellum obligent sibi illum in cuius seruitium uadunt.

An non uocati sed proprio motu accedentes ad bellum et uiriliter poscentes obligent sibi cum illum in cuius seruitium uadunt reuocantem et contradicentem.

Secunda pars de accedentibus qui tenentur ad antidota.

tur ad antidota.

An talis agat contra illum quem tenet Tertia pars de accedentibus propter gloriam consequendam.

An tales obligent sibi illum in cuius seruitium uadunt.

Quarta pars de accedentibus quia locuerunt operas suas.

An tales agant contra conductorem.

Quinta pars de accedentibus animo spoliandi.

An talibus actio competat.

Sexta pars.

An clerici ad bellum accedere possint.

An stipendiarii in Alemania constituto salario per ducentem agant contra eum qui dum uenirent amisit totaliter statum suum.

An stipendiarii assumpti in Alemania per ciuitatem Italicam constituto salario panem qui dum uenirent ciuitas uiolenter occupata est per tyrannum agant ad salarium in totum uel pro rata uel ad quid.

Quando solui debeat stipendiarius an in principio mensis cuiuslibet anni an in fine.

An stipendiarius se absentans etiam de licentia domini aliquo tempore perdat salarium pro illo tempore.

An stipendiarii qui culpa fuere noluit toto tempore summe suae perdat stipendium totius temporis an tantum pro tempore quo non fuerunt.

An stipendiarius seruire possit per substitutionem.

An stipendiarius perdat stipendium tempore quo infirmatur.

Quintus tractatus tertii principalis. scilicet de spoliis et captiuis qui fiunt in bello.

An capiens in bello efficiatur dominus personae captae et rei et an sit locus postliminio.

An capti in bello duarum ciuitatum efficiantur serui et dominum eorum queratur.

An capta in bello efficiantur capientium.

An in bellis licitum sit insidiis uti.

An consecutus in bello totam suam interesse possit iterum aduersarium in iudicio conuenire uel bellum iterato contra eum indicare.

An morientes in bello saluentur.

An prebys et possessionibus ecclesie corpora in bello bellare liceat et super hoc milites conuocare.

An liceat episcopis ad bellum accedere sine licentia papae.

An prelati per temporalibus que tenent ab Imperatore teneantur soluere tributum pro bello ab eo indicto.

An capto in bello iusto sit miserendum.

An ecclesia debeat bellum indicare iudice.

An degentes in bello qui pugnare non possunt gaudeant in munitatibus bellanciarum.

An liceat prelati ratione temporalis iurisdictionis bella indicare ut eos interesse et ad bellum alios certari.



an liceat prelo pro futuro subditi sui in  
punita bellum indicere et alios q̄ iniuriatos  
in bello capere.

an delegatus pape possit indicere bellum.  
id est inuocare brachia secularia.

an bella indicta per ecclesiam contra  
excommunicatos sint in exitoria.

Sextus et ultimus tractat⁹ tercii p̄n  
cipalis per modum tabule scz quot sunt ge  
nera bellorum de quibus reperitur i iure ex  
pressum.

Quartus tractatus tercii principalis  
scilicet de bello particulari quod sit ob tutelā  
sui et diuiditur in octo partes principales.

Prima pars.

Quid sit particulare bellum.

Secunda pars.

Quot sint species particulares belli

Tercia pars.

Quo iure inductū sit particularē bellū

Quarta pars scilicet quibus liceat hoc  
particulare bellum indicere.

an clericus cōpetat hoc bellū indicere

an cum liceat clerico se defendere etiā  
occidendo hoc sibi liceat in ecclesia.

an liceat clerico celebranti inualo se  
fendere et occidere et sic continuato officio  
celebrare.

an baptisanti confirmanti et in ungen  
ti ordinanti et similia sacramenta conferenti  
in uas licitum sit collationem illorum post  
ponere inchoatum.

an p̄eligenda sit mors in uia sacro  
tis cum puerum in mortis articulo baptizat  
an uita eterna pueri ipsius ne sine baptismo  
decedat.

an monacho liceat se defendere sine li  
centia abbatis sui.

an bannito qui quandoq; p̄ leges mu  
nicip. impune occidi p̄t liceat se defendere

Quinta pars. scilicet contra quos liceat hoc par  
ticulare bellum indicere.

an liceat contra superiorem suum.

an contra iudicem etiā si iniuste aliquid  
egat.

an filio contra patrem.

an monacho contra abbatem.

an seruo contra dominum.

Sexta pars scilicet pro liceat hoc par  
ticulare indicere. Et diuiditur in duas sui p  
tes principales.

Prima pars scilicet p̄ quibus personis  
liceat.

an liceat patri pro filio.

an marito pro uxore.

an p̄ fratre sorore et aliis cōiunctis per  
sonis.

an quis teneatur quem defendere ne  
ab alio occidatur.

an uasallus teneatur iuuare dominum  
suum.

an seruus teneatur defendere dominū

suum.

an miles teneatur defendere p̄positum  
suum.

an uasallus uidens dominum inualum  
ex parte una patrem ex alia utraq; pariter  
in mortis articulo nisi iuuentur nec iuuare  
potest nisi alterum quem iuuabit.

Quid iuris eodem themate retento in  
clerico qui uidens episcopum suum in uasum  
ex una parte patrem ex alia. utrunq; pariter  
in mortis articulo nisi iuuentur nec iuuare  
poterit nisi alterum quem iuuabit.

Secunda pars scilicet pro quibus re  
bus liceat.

an liceat pro rebus iuste possessis.

an pro iniuste possessis.

an et si liceat res defendere defendens  
cum moderamine inculpate tutele. Si occi  
det alias inutilit irregularitatem incurrat.

an pro rebus suis defendendis contra  
clericum excommunicationem incidat manus  
in laicando.

an pro rebus defendendis uocatis ami  
cio licitum sit subsidium impendere.

an pro rebus defendendis licitum sit  
sic contra omnes uim ui repellere sicut con  
tra quos licitum est pro personis.

an pro rebus depositis uel cōmodatis  
liceat uim ui repellere.

Septima pars scilicet qualiter liceat  
hoc particulare bellum indicere.

an liceat cum moderamine inculpate  
tutele.

Quid sit moderamen inculpate tutele  
et que in eo requirantur.

an liceat illi et debili cum ense se dese  
dere contra fortem et robustum percutientes  
tantum pugno.

an et si liceat in continenti se defende  
re qualiter intelligatur in continenti.

Qualiter intelligatur equiualeutia in  
ipso actu violento.

an uindicasse uideatur non defendisse  
si spoliatores meos de possessione mea expuli  
qui ante latifundare uolebat de possessione resti  
tuenda.

an paratum ad me percutiendum ex  
pectare debeat uel cum preuenire.

an miles quem uicinus aggreditur cē  
seatur uim ui repellere si expectat et pcuti  
at cum cum alio fugere possit.

an si vulneratus post vulnera illata in  
sequitur vulnerantē et ipsum percutiat q̄ tñ  
non licet puniri debeat ut dolosus uel ut cul  
pabilis.

an uolentia illata persone possit p̄ ami  
cos p̄pullari sicut illata rebus.

an seruens de mandato domini sui ux  
orem interficiens excusetur.

Octaua et ultima pars quarti tractat⁹  
terci principalis.

Quis sit finis particularis belli.

Quintus tractatus tercii principalis  
scilicet de particulari bello quod fit ad dese-  
sum multici corporis et repelalie nuncupantur  
Et diuiditur iste tractatus prima sui diuisio-  
ne in duas partes principales.

Prima pars.

Unde et a quo ortum habuerit repelalie

Secunda pars scilicet de causis repelaliaz

De causa productus siue efficiēte repelaliaz

Tercia pars scilicet de causa materiali. Et di-  
uiditur in quatuor partes principales.

Prima pars de materia in qua.

Quid sit materia in qua.

Quid sit materia circa quam.

Quid si de materia ex qua

Quibus personis concedatur facultas  
repelaliarum.

An incolis repelalie concedantur.

An ciuibus non subiectis iurisdictionis  
ciuitatis et alia non facientibus factiones  
sint indicende repelalie.

an cum per conventionem concedan-  
tur repelalie contra ciuitatem originis.

an cuilibet et habitis pro ciuibus limi-  
tate tamen repelalie concedantur

an ciuibus unius ciuitatis quod pacto vel  
statuto tractantur ut ciues per eandem con-  
cedi possint repelalie.

Secunda pars de materia circa quam.

An contra res eorum qui capi possunt  
uigore repelaliarum possint indici repelalie.

An repelalie simpliciter indite exer-  
ceri possint contra bona existentibus inter-  
ritorio ciuitatis contra quam sunt indite  
ut capiantur et reducantur interritorium ci-  
uitatis indicentis.

An si una ciuitas indicat repelalias con-  
tra aliam possit rector ciuitatis indicentis scri-  
bere rectori ciuitatis contra quas ut exerce-  
at repelalias in rebus ibi situatis.

Tercia pars de materia contra quam

An repelalie indite per unam ciuita-  
tem contra homines alterius ciuitatis exer-  
ceri possint incolis illius ciuitatis.

An repelalie indite per unam ciui-  
tatem contra homines alterius ciuitatis ex-  
erceri possint contra homines illius ciuitatis  
alibi commorantes.

An repelalie exerceri possint contra  
ciues vel incolas unius ciuitatis onera subi-  
tes eiusdem qui etiam sunt ciues alterius ciui-  
tatis.

An contra mulieres exerceri possint  
repelalie.

An contra clericos non coniugatos.

Item et an contra coniugatos exerce-  
ri ualeant repelalie

An episcopo negligente de clericis suis  
iusticias facere nec haberi possit recursus ad  
superiorem possint indici repelalie contra cle-  
ricos eisdem per iudicem secularem.

An contra bonos vel etiam alios studē-

tes bonos cunctes pade pro studio exerceri  
possint repelalie.

An contra ambassatores exerceri pos-  
sint repelalie

An contra cunctes ad mandinas ad hie-  
tum locum uel ad alium locum indulgentie.

Item an contra nauigantes et an con-  
tra illos qui uocari non possint et in multis  
aliis casibus ualeant exerceri repelalie.

An contra bonos potestatem mediola-  
ni ibi iniusticiam facientem possint concedi re-  
pelalie

An contra offi. potestatis uel rectoris  
iniusticiam facientis possint indici repelalie.

An contra consules priores ciuitatis  
iusticiam facere denegantes possint indici re-  
pelalie.

An contra singulares personas penite-  
ntes innocentes propter delictum domini uel al-  
terius priuati de quo non sit iusticia Si dici  
possint repelalie.

An contra certum genus hominum fa-  
cere iusticiam denegantium indici possint re-  
pelalie.

Quarta pars. scilicet de materia ex qua que  
insurgit ex defectu iurisdictionis quia primo  
requiri debet iudex antequam repelalie cedat.

An requiri debeat iudex ut iusticiam  
faciat antequam repelalie concedantur.

An iudex iniuriam patientis qui non  
audet litigare in ciuitate iniuriam inferētis  
possit scribere ut in alios iurisdictionem pro-  
get ne arbitros eligat.

Quis iudex requiri debeat ut iusticias  
faciat.

Qualis iusticia requiratur ut repela-  
lie indicantur.

Quando dicatur non posse haberi co-  
pia superiorum locis sit repelaliaz indicti

Quarta pars principalis. scilicet de causa for-  
mali. Et diuiditur in duas principales

Prima pars de forma indicendarum  
repelaliarum

Quo iure concedantur repelalie.

Quo comparere possit ad impediendū  
ut indicentur.

Que defensione competant illi contra que  
petantur.

Qualiter constabit de iniusticia facta  
uel denegata.

An si aliqua capiantur uigore repela-  
liorum detineri ualeant ut ex primo decreto  
an secundo.

Secunda pars scilicet de forma exer-  
cendi repelalias.

An liceat illi cui sunt concessa repela-  
lie auctoritate propria uel per ministros con-  
cedentis exerceri.

An personas et res captas tenentur ca-  
pieno iudici presentare uel sibi retinere.

An res capte uigore repelaliarum ne-  
dantur uel insolutam accipiuntur uel exsti-



mentur.

An quis oleus seriatis possit repes-  
lias exercere.

An si quis vult se defendere ul' res cap-  
tas qualis cognitio adhibeatur.

An exacto competat regress' contra il-  
lum ppter cuius debitum vel delictum exact.  
est.

An exacto succurratur contra recto-  
rem sicut contra debitorem principalem.

An captus vigore represaliarum possit  
auctoritate p'pria homines illius ciuitatis ca-  
pere in qua captus fuit.

An per statuta represalie concedi pos-  
sint in casibus a se a iure non p'missis.

An statuti ciuitatis quo cauetur q' si  
lius teneatur p' patre delinquere possint. ex-  
erceat contra filium existentem extra territo-  
rium ciuitatis

an per pactam possint licite fieri ut u-  
nus teneatur pro alio.

Sextus et ultimus tractat' terci' pn-  
cipalis totius operis scz de particulare bello  
quod sit ad purgationem quod duellum nun-  
cupatur. Et diuiditur prima sua diuisione in  
vii. partes principales.

Prima pars.

Quid sit duellum.

Secunda pars scilicet quot sint spe-  
cies duelli.

Qualiter duellum sit propter odii ex-  
agerationem.

Qualiter sit duellum propter gloriam  
in publico consequendam

Qualiter duellum propter purgatione  
alicuius criminis.

Tercia pars scz quo iure sit introduc-  
tum et quo inhibitum..

Qualiter duellum quod sit propter o-  
dii exagerationem sit introductum iure na-  
turali sumpto pro instinctu nature prouenien-  
te ex sensualitate ad aliquid appetendum

Qualiter duellum quod sit propter o-  
dii exagerationem sit inhibitum iure natu-  
rali sumpto pro rationabili intelligentia et sic  
iure gentium et diuino canonico et civili.

Qualiter duellum quod sit propter glo-  
riam introductum sit. iure naturali sumpto  
pro instructione ex sensualitate proueniente

Qualiter duellum q' sit propter glori-  
am sit inhibitum iure diuino.

Qualiter duellum quod sit propter glo-  
riam sit inhibitum iure gentium.

qualiter duellum quod sit propter glo-  
riam sit inhibitum iure diuino canonico et  
civili.

quarta pars propter quid duellum pur-  
gatorium sit permissum et propter quid in-  
hibitum.

qualiter duellum purgatorium inhibi-  
tum sit iure diuino.

qualiter inhibitum sit iure gentium.

qualiter inhibitum sit iure canonico.  
qualiter inhibitum sit regulariter iure  
civili.

quinta pars scilicet in quibus casibus  
permittatur duellum purgatorium.

Qualiter duellum purgatorium iure  
lombardo in. xx. casibus permittatur.

Sexta pars inter quos iniuri possit du-  
ellum.

Qualiter duellum purgatorium inter  
principales regulariter fieri debeat.

Septima et ultima pars. sc. qualiter fi-  
at duellum.

Qualiter duellum purgatorium ad in-  
star sit iudicii contentiosi.

an iuramentum de astu inter duellantes  
sit prestandum et per quem.

an uni parti campione dato in casibus  
a iure p'missis liceat etiam alteri parte dare  
campionem.

Qualiter in casibus hincinde (scz capd  
conceditur fiet ipsorum datio et concessio.

an quilibet admittatur pro campione.

In cuius electione sit duellum.

Qualiter ordinetur duellum.

Quibus armis duellari debeat.

an si arma seu fustes unius duellantis  
frangantur uel cadant debeant alia dari.

Quis duellantium prius percutere de-  
beat.

an duellum primo die non finitum se-  
quenti die terminari possit.

an in duello succumbens i expens' con-  
temnetur.

an puocans in duello succubens puiat  
pena talionis.

an puocans ad duellum ppter crimen  
succubens et condemnatus possit de eodem  
crimine accusari in iudicio contentioso

an puocans ad duellum ppter crimen  
publicum desubens a duello incidat in penas  
turpiss.

an puocans ad duellum iure lombardo  
possit de licentia iudicis desistere.

an puocans ad duellum possit sine pena  
ante lit. contest. desistere.

Item et quando in duello lis dicatur  
contestari.

DEO. GRATIAS.

Impressus Bononie ad instantiam Sigis-  
mundi de libris per me magistrum Henricum  
de Colonia xvi. kl. Jan. Anno a domini in-  
carnatione Millesimoquadringentesimo sep-  
tuagesimo septimo. Laus Deo.





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